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AFSCME LOCAL 101

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
AT SAN JOSE**

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ, BOARD OF
ADMINISTRATION FOR POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE, and DOES 1-10,
inclusive,

Defendants.

Consolidated Case No. 1-12-CV-225926

*[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]*

ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2

**DECLARATION OF VISHTASP M.
SOROUSHIAN IN SUPPORT OF AFSCME
LOCAL 101'S REPLY IN SUPPORT OF
MOTION FOR ATTORNEYS' FEES
PURSUANT TO CCP SECTION 1021.5 AND
PAYMENT OF EXPENSES OF PROOF
UNDER CCP SECTION 2033.420**

AND RELATED CROSS-COMPLAINT AND
CONSOLIDATED ACTIONS

Hearing Date: September 25, 2014
Hearing Time: 9
Courtroom: 2
Judge: Honorable Patricia Lucas
Action Filed: June 6, 2012
Trial Date: July 22, 2013

I, VISHTASP M. SOROUSHIAN, declare under penalty of perjury:

1. I have personal knowledge of and am competent to testify to the matters within this
declaration.

1 2. In late August of 2014, the parties to this consolidated action executed a [Proposed]
2 Stipulation re Bifurcation of Motion for Attorneys' Fees by which they agreed that, in relevant part,
3 that the court should first determine whether AFSCME was entitled to attorneys' fees pursuant to
4 section 2033.420. After the court made said determinations, it would order future briefing as
5 necessary to address actual fees recoverable. Exhibit 1 is a true and correct copy of the
6 aforementioned stipulation.

7 3. The court approved the stipulation on September 8, 2014. (Exh. 1.)

8 4. At trial, AFSCME filed several requests for judicial notice asking, in relevant part, for
9 judicial notice of Measure B and various provisions of its Municipal Code. Exhibit 2 is a true and
10 correct copy of that request for judicial notice.

11 5. On July 26, 2013, the parties signed a stipulation that included admission of the text of
12 Measure B, pre-Measure B City Charter, and the pre-Measure B Municipal Code. The court signed
13 the stipulation on July 29, 2013. Exhibit 3 is a true and correct copy of that stipulation.

14 6. I participated in the phone call on October 12, 2012, whereby the parties met and
15 conferred over AFSCME's discovery requests. I recall Linda Ross, attorney for the City of San José,
16 complaining that some of the requests for admissions ("RFAs") - in her opinion - simply paraphrased
17 provisions of City enactments. She said that, with respect to those particular RFAs, the City would
18 deny them and include in the answers an exact iteration of the particular provision for which an
19 admission was requested.

20 7. Not only did the City's responses to the RFAs not follow this approach, but the City
21 did not mention this intent in its subsequent meet and confer letters.

22 8. Exhibit 4 is a true and correct copy of relevant pages in AFSCME's original complaint
23 in this case.

24 9. Exhibit 5 is a true and correct copy of a press release dated for immediate release on
25 December 23, 2013) and entitled: "Statement from Chuck Reed regarding Judge Lucas' Tentative
26 Decision in the Measure B Lawsuit." It is publically available on the internet, and I found it online
27 myself. (<http://www.sanjoseca.gov/ArchiveCenter/ViewFile/Item/2200>.)
28

1 I declare under penalty of perjury that the foregoing is true and correct. Executed this
2 25th day of September, 2014 at Oakland, California.

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5 VISHTASP M. SOROUSHIAN
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PROOF OF SERVICE

SANTA CLARA SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Second Floor, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

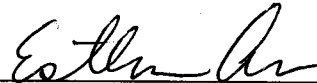
**DECLARATION OF VISHTASP M. SOROUSHIAN IN SUPPORT OF
REPLY IN SUPPORT OF MOTION FOR PAYMENT OF EXPENSES
OF PROOF UNDER CCP SECTION 2033.420**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, September 18, 2014.



Esther Aviva

SERVICE LIST

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Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY McCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112-CV-225928)

AND

Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112-CV-226574)

AND

Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112-CV-226570)

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AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV22574)

AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)

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Attorneys for Plaintiffs, SAN JOSE RETIRED EMPLOYEES ASSOCIATION, HOWARD E. FLEMING, DONALD S. MACRAE, FRANCES J. OLSON, GARY J. RICHERT and ROSALINDA NAVARRO (Santa Clara Superior Court Case No. 112CV233660)

EXHIBIT 1

M. OLIVARI

ENDORSED
FILED
SEP 08 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
BY _____ DEPUTY

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7 Attorneys for Defendant
City of San Jose
8

9
10 IN THE SUPERIOR COURT FOR THE
COUNTY OF SANTA CLARA

11 SAN JOSE POLICE OFFICERS
ASSOCIATION,

12 Plaintiff,

13 v.

14 CITY OF SAN JOSE, BOARD OF
15 ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
16 SAN JOSE, and DOES 1-10 inclusive,

17 Defendants.

18 AND RELATED CROSS-COMPLAINT
19 AND CONSOLIDATED ACTIONS
20

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864]

[PROPOSED] STIPULATION RE
BIFURCATION OF MOTIONS FOR
ATTORNEY'S FEES

Complaint Filed: June 6, 2012
Trial Date: June 17, 2013

21 WHEREAS the following parties have filed motions for attorney's fees in this matter: San
22 Jose Police Officers Association, American Federation of State, County and Municipal
23 Employees, and San Jose Retired Employees Association;

24 WHEREAS all three parties have brought motions under California Code of Civil
25 Procedure section 1021.5;

26 WHEREAS the threshold determinations to be made by the Court under section 1021.5
27 include whether (1) petitioners were "successful" parties, (2) whether the Court's decision
28 "resulted in an important right affecting the public interest" (3) whether "a significant benefit,

Case No. 112CV225926

STIPULATION RE BIFURCATION OF MOTIONS FOR ATTORNEY'S FEES

1 whether pecuniary or non pecuniary" has been conferred on the general public or a large class of
2 persons," and (4) whether "the necessity and financial burden of private enforcement ... are such
3 as to make the award appropriate," among others;

4 WHEREAS AFSCME has made an additional motion for fees under Code of Civil
5 Procedure section 2033.420 based on the contention that AFSCME proved the truth at trial of a
6 requested admission that the City denied during discovery;

7 WHEREAS these fee motions involve threshold determinations that must be made before
8 the Court makes the additional fact specific determinations required for a fee award, which include
9 the appropriate hourly rates for each attorney and paralegal, whether the hours worked were
10 reasonable, and the degree of success by each party in this litigation, among others;

11 WHEREAS the fee motions as a group involve billings by numerous attorneys and
12 paralegals, involve work that spans a year and a half period for discovery, pretrial, trial and post
13 trial proceedings, and involve total claims of almost \$2 million in fees;

14 WHEREAS a decision on the threshold determinations to be made under Sections 1021.5
15 and 2033.420 may obviate some or all of the burden of litigation over the fact specific
16 determinations of the proper hourly rates and reasonable number of hours expended;

17 WHEREAS the parties desire to avoid any unnecessary litigation and expense;

18 NOW THEREFORE IT IS STIPULATED THAT:

19 1. The fee motions shall be bifurcated with the Court first considering the factors
20 listed in Sections 1021.5 and 2033.420 that govern the entitlement to attorney's fees under those
21 sections; and

22 2. Once the Court has made the determinations in Section 1, the Court shall make a
23 further order on the briefing needed on the appropriate hourly rates for each attorney and
24 paralegal, whether the hours worked were reasonable, any adjustment of hours due to the degree
25 of success of a party, and any other topic that the Court deems necessary.
26
27
28

1 Dated: August 22, 2014

MEYERS, NAVE, RIBACK, SILVER & WILSON

2
3 By Arthur A. Hartinger
4 Linda M. Ross

5 Attorneys for Defendants City of San Jose
6 City of San Jose and Debra Figone

7
8 Dated: August 19, 2014

CARROLL, BURDICK & McDONOUGH LLP

9
10 By Gregg McLean Adam
11 Gonzalo C. Martinez

12 Amber L. Griffiths
13 Attorneys for Plaintiff San Jose Police Officers'
Association

14 Dated: August __, 2014

BEESON, TAYOR & BODINE APC

15
16 By

17 Teague P. Paterson
18 Vishtasp M. Soroushian
Attorneys for Plaintiff AFSCME Local 101

19 Dated: August __, 2014

SILVER, HADDEN, SILVER, WEXLER & LEVINE

20
21 By

22 Stephen H. Silver
23 Jacob A. Kalinski
24 Attorneys for Plaintiffs San Jose Retired Employees
Association

1 Dated: August __, 2014
2
3

MEYERS, NAVE, RIBACK, SILVER & WILSON

4 By _____
5

Arthur A. Hartinger
Linda M. Ross
Attorneys for Defendants City of San Jose
City of San Jose and Debra Figone

6
7 Dated: August __, 2014
8

CARROLL, BURDICK & McDONOUGH LLP

9
10 By _____
11

Gregg McLean Adam
Gonzalo C. Martinez
Amber L. Griffiths
Attorneys for Plaintiff San Jose Police Officers'
Association

12
13
14 Dated: August ²¹__, 2014
15

BEESON, TAYOR & BODINE APC

16 By  _____
17

Teague P. Paterson
Vishtasp M. Soroushian
Attorneys for Plaintiff AFSCME Local 101

18
19 Dated: August __, 2014
20

SILVER, HADDEN, SILVER, WEXLER & LEVINE

21
22 By _____
23

Stephen H. Silver
Jacob A. Kalinski
Attorneys for Plaintiffs San Jose Retired Employees
Association

1 Dated: August __, 2014
2
3
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7

MEYERS, NAVE, RIBACK, SILVER & WILSON

By

Arthur A. Hartinger
Linda M. Ross
Attorneys for Defendants City of San Jose
City of San Jose and Debra Figone

8 Dated: August __, 2014
9
10
11
12
13

CARROLL, BURDICK & McDONOUGH LLP

By

Gregg McLean Adam
Gonzalo C. Martinez
Amber L. Griffiths
Attorneys for Plaintiff San Jose Police Officers'
Association

14 Dated: August __, 2014
15
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19

BEESON, TAYOR & BODINE APC

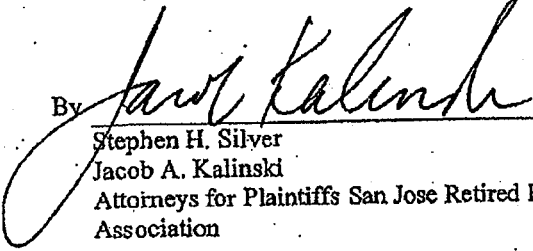
By

Teague P. Paterson
Vishtasp M. Soroushian
Attorneys for Plaintiff AFSCME Local 101

20 Dated: August 21, 2014
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SILVER, HADDEN, SILVER, WEXLER & LEVINE

By


Stephen H. Silver
Jacob A. Kalinski
Attorneys for Plaintiffs San Jose Retired Employees
Association

ORDER

The forgoing Stipulation Re Bifurcation of Motions for Attorneys' Fees having been reviewed and good cause appearing,

IT IS SO ORDERED

Dated: ~~SEP - 9 2014~~ 2016/

Patricia Lucas
JUDGE OF THE SUPERIOR COURT

2316743.1

EXHIBIT 2

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Employees Association

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

AT SAN JOSÉ

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ, BOARD OF
ADMINISTRATION FOR POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE, and DOES 1-10,
inclusive,

Defendants.

Consolidated Case No. 1-12-CV-225926

*[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]*

**ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2**

**PLAINTIFF/PETITIONERS AFSCME
LOCAL 101'S AND SAN JOSE RETIRED
EMPLOYEES ASSOCIATION'S REQUEST
FOR JUDICIAL NOTICE OF
DOCUMENTS FOR TRIAL**

1 AND RELATED CROSS-COMPLAINT AND
2 CONSOLIDATED ACTIONS

Courtroom: 2
Judge: Hon. Patricia Lucas
Complaint Filed: July 5, 2012
Trial Date: June 22, 2013

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4 **REQUEST FOR JUDICIAL NOTICE**

5 Plaintiff/Petitioners AFSCME Local 101 and the San José Retired Employees Association
6 hereby request the Court to take judicial notice pursuant to California Evidence Code Sections 450 *et*
7 *seq.*, and in accordance with California Rules of Court 3.1113, subdivision (l) and 3.1306,
8 subdivision (c), of the following material, which is included in the trial exhibit binders prepared by
9 AFSCME Local 101 and all references are to the trial exhibit numbers.

10 **1. U.S. Department of Social Security and U.S. Department of Labor Materials**
11 **(Plaintiffs' Exhibits 487, 500-505)**

12 Social Security publications prepared by the U.S. Department of Social Security
13 Administration, and the Consumer Price Indexes prepared by the U.S. Department of Labor are
14 properly subject to judicial notice pursuant to Evidence Code sections 453 and 452(c) ("Official acts
15 of the legislative, executive, and judicial departments of the United States and of any state of the
16 United States.") The documents issued by the U.S. Department of Social Security Administration and
17 the U.S. Department of Labor are an official act of the executive branch of the United States and,
18 therefore, judicial notice is appropriate. (*See, e.g., Carleton v. Tortosa* (1993) 14 Cal.App.4th 745,
19 753, fn. 1 (noting that handbook published by California Department of Real Estate showing general
20 areas tested on real estate brokers exam and code of ethics for licensees is an official act of the
21 executive department of the state); *Casella v. SouthWest Dealer Services, Inc.* (2007) 157
22 Cal.App.4th 1127, 1137 (judicial notice taken of article published by DMV regarding disclosure
23 requirements imposed on car dealers); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853,
24 fn. 3 (judicial notice of Attorney General's report on gasoline pricing proper as an official act of
25 executive department).) Further, judicial notice is proper pursuant to section 452(h), as the U.S.
26 Department of Social Security Administration and the U.S. Department of Labor publications are not
27 reasonably subject to dispute and are sources of indisputable accuracy.
28

2. **Federated City Employees Retirement System (“FCERS”) Board Resolutions** (Plaintiffs’ Exhibits 323-327, 643-645)
3. **FCERS Annual Reports, Actuarial Valuation, and Audit Reports** (Plaintiffs’ Exhibits 393-396, 398-420, 422, 522, 421-422, 650-652)
4. **FCERS Comprehensive Annual Board Letters** (Plaintiffs’ Exhibits 460-461, 464-465, 467-471, 473-477, 481)
5. **FCERS Handbooks** (Plaintiffs’ Exhibits 328-330, 636, 653, 655, 706 and 707)
6. **FCERS Fact Sheets** (Plaintiffs’ Exhibits 331-342)
7. **FCERS Brochures** (Plaintiffs’ Exhibits 343-345)
8. **FCERS Newsletters** (Plaintiffs’ Exhibits 346-357, 511-521)

The Federated City Employees Retirement System (“FCERS”) material referenced above (paragraphs 2-8) is properly subject to judicial notice pursuant to Evidence Code 453 and 452(b) (“Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.”). These documents have been reviewed and their authenticity has been confirmed. On July 15, 2013, the Court signed a Stipulation and Order Regarding the Authenticity of Retirement Board documents; AFSCME and the FCERS Board stipulated to the authenticity of all the FCERS Materials listed above. As such, the retirement systems’ publications of board resolutions, board letters, annual reports, general benefit information, and newsletters are not reasonably subject to dispute and come from sources of indisputable accuracy. (Evid. Code 452(h).)

Furthermore, the materials were previously submitted to FCERS members, the City of San Jose, and made publically available. In *Ampex Corp. v. Cargle*, 128 Cal.App.4th 1569, 1573, fn.2, the appellate court took judicial notice of Company’s posted SEC filings, press releases and letters because they “are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Here, the materials were similarly promulgated to various independent entities and thus, are not reasonably subject to dispute and are capable of immediate and accurate determination by independent sources.

///

1 Finally, agency resolutions, minutes, standing orders, manuals, and benefits booklets are
2 properly subject to judicial notice. (*See Requa v. Regents* (2012) 213 Cal.App.4th 213, 223 fn.7
3 (hereinafter “*Requa*”); *see also Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014,
4 1027 (“The Evidence Code also expressly provides for judicial notice of a public entity’s legislative
5 enactments and official acts. Thus, we may take judicial notice of local ordinances and the official
6 resolutions, reports, and other official acts of a city.”) (hereinafter “*Trinity*”))

7
8 **9. Documents from the Retirement Services Department of the City of San Jose**
9 (358-392, 478)

10 **10. Documents from the San Jose City Council and Staff** (397, 441-457, 472, 479,
11 480, 491, 708)

12 **11. San Jose City Auditor’s Report** (423)

13 The above-referenced documents (paragraphs 9-11) issued by the City of San Jose are
14 properly subject to judicial notice pursuant to Evidence Code sections 453 and 452(c) (“Official acts
15 of the legislative, executive, and judicial departments of the United States and of any state of the
16 United States.”) The documents were issued by the San Jose Department of Retirement Services, the
17 San Jose City Council, and the San Jose City Staff in their official capacity. The City of San Jose is a
18 municipal corporation of the state of California and therefore an instrumentality of the State. (*See*
19 *Reynolds v. Sims*, 377 U.S. 533, 575 (1964) (affirming that cities are “subordinate governmental
20 instrumentalities created by the State to assist in the carrying out of state governmental functions”);
21 *See also Broughton v. Pensacola*, 93 U.S. 266, 269 (1876) (holding that cities are instrumentalities
22 “so far as it is invested with subordinate legislative powers for local purposes”).) Therefore, material
23 it issues is properly subject to notice.

24 Further, judicial notice is proper pursuant to section 452(h), as there can be no dispute that the
25 documents were issued by the City of San Jose. It is well settled that agency resolutions, minutes,
26 standing orders, manuals, and benefits booklets are properly subject to judicial notice. (*See Requa*,
27 *supra*, 213 Cal.App.4th at 223 fn.7; *see also Trinity, supra*, 193 Cal.App.4th at 1027 (“The Evidence
28 Code also expressly provides for judicial notice of a public entity’s legislative enactments and official

1 acts. Thus, we may take judicial notice of local ordinances and the official resolutions, reports, and
2 other official acts of a city.”)

3 **12. Measure B, San Jose Charter Provision, Municipal Code Sections, and**
4 **Ordinances** (Plaintiffs’ Exhibits 523-525, 606, 610, 614, 618, 620, 622, 626, 628,
5 630, 649 and 701, 709-711)

6 The San Jose Municipal Code Sections and Ordinances are properly subject to judicial notice
7 pursuant to California Evidence Code section 453 and 452(b) (“Regulations and legislative
8 enactments issued by or under the authority of the United States or any public entity in the United
9 States.”); see also *Trinity, supra*, 193 Cal.App.4th at 1027 (“The Evidence Code also expressly
10 provides for judicial notice of a public entity’s legislative enactments and official acts. Thus, we may
11 take judicial notice of local ordinances and the official resolutions, reports, and other official acts of a
12 city.”).)

13 **13. Memoranda from City Official** (Plaintiffs’ Exhibits 637-642)

14 **14. Letters from Actuaries to Ed Overton** (Plaintiffs’ Exhibits 646, 705 and 648)

15 Exhibits 637 to 642 are Memoranda from various City Officials to City Council (637-638,
16 641-642), the Board of Administration for the Police and Fire Retirement System (643) or the Rules
17 and Open Government Committee (640). Exhibits 646, 705 and 648 are letters from actuaries hired
18 by the Federated City Employees Retirement System to Ed Overton, a former Director of Retirement
19 Services for the City of San Jose. All of these documents were produced by the City in response to
20 inspection demands served by parties in this action. Courts may take judicial notice of official acts
21 and public records. (*Aquila, Inc. v. Sup. Ct.* (2007) 148 Cal.App.4th 556, 569; *Mangini v. R.J.*
22 *Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, overruled on other grounds by *In re Tobacco*
23 *Cases II* (2007) 41 Cal.4th 1257.) Furthermore, judicial notice is proper for these documents because
24 they are not reasonably subject to dispute. (Evidence Code Section 452(h).)

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1 For the foregoing reasons, Plaintiff/Petitioners respectfully requests this Court to take judicial
2 notice of the above-referenced attached hereto.

3
4 Dated: July 19, 2013

BEESON, TAYER & BODINE, APC

5
6 By: 

TEAGUE P. PATERSON

7 VISHTASP M. SOROUSHIAN

Attorneys for Plaintiff AFSCME LOCAL 101

8
9 Dated: July 19, 2013

SILVER, HADDEN, SILVER, WEXLER & LEVINE

10
11 By: Jacob Kalinski /VMS

JACOB KALINSKI

12 Attorneys for Plaintiff SAN JOSE RETIRED
13 EMPLOYEES ASSOCIATION
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California 94607-4051. On this day, I served the foregoing documents:

**PLAINTIFF/PETITIONERS AFSCME LOCAL 101'S AND SAN JOSE
RETIRED EMPLOYEES ASSOCIATION'S REQUEST FOR JUDICIAL
NOTICE OF DOCUMENTS FOR TRIAL**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.


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Attorneys for Defendants, THE CITY OF SAN JOSE AND DEBRA FIGONE

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, July 19, 2013.



Tanya Gatt

SERVICE LIST

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13 *112CV233660)*

EXHIBIT 3

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT

FILED

JUL 29 2013

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY *[Signature]* DEPUTY
NAOMI MATAU

UCS

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Board of Administration of the Federated City
Employees' Retirement System

No. 1-12-CV-225926
(and Consolidated Actions
1-12-CV-225928, 1-12-CV-226570,
1-12-CV-226574, 1-12-CV-227864,
and 1-12-CV-233660)

**STIPULATION AND [PROPOSED] ORDER
REGARDING EXHIBITS OF DEFENDANT
CITY OF SAN JOSE, PLAINTIFFS SJPOA,**

1 RETIREMENT PLAN OF CITY OF
2 SAN JOSE, and DOES 1-10, inclusive,
3 Defendants.

AND AFSCME LOCAL 101

Complaint Filed: June 16, 2012
Trial: July 22, 2013

4
5 AND RELATED CROSS-COMPLAINT
6 AND CONSOLIDATED ACTIONS

7
8 All parties in this action, acting by and through their counsel of record, hereby
9 agree and stipulate as follows:

10 WHEREAS, the parties have continued to pursue the shared goal of
11 elimination of excessive time spent at trial on authentication and admission of exhibits;

12 WHEREAS, Plaintiffs and Defendant City of San Jose have met extensively in
13 an attempt to form as many stipulations as possible as to the trial exhibits;

14 WHEREAS, the parties have agreed to stipulate to authenticity of certain trial
15 exhibits;

16 WHEREAS, the parties have agreed to stipulate to admissibility of certain trial
17 exhibits;

18 WHEREAS, all parties are signatories to this agreement;

19 THE PARTIES HEREBY STIPULATE to the following:

20
21 **CITY OF SAN JOSE EXHIBITS**

Measure B [5000 series]				
Ex. No	Date	Description	ID	EV
5000	February 8, 2012	Full Text of Measure B: Article XV-A Retirement: Public Employee Pension Plan Amendments – To Ensure Fair and Sustainable Retirement Benefits While Preserving Essential City Services. [SJRJN000095 – 000111]		Admit
5001	N/A	Ballot Pamphlet – Measure B. [SJ001410 – 001412]		Admit

History of Measure B [5100 series]				
Ex. No	Date	Description	ID	EV
5100	November 2008	City of San Jose General Fund Structural Deficit Elimination Plan. [SJ001413 – 001509]		Admit
5101	September 2010	City Auditor's Report, "Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future." [GURZA000001 – 000080]		Admitted previously
5102	September 2010	Exhibit presentation to Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future. [SJ001510 – 001534]		Admitted previously
5103	April 2011	City of San Jose Report to City Council: "Disability Retirement: A Program in Need of Reform." [SJ001535 – 001576]		Admitted previously
5104	May 2, 2011	Figone memorandum regarding City of San Jose Fiscal Reform Plan. [SJ001577 – 001641]		Admit
5105	March 6, 2012	City of San Jose Resolution No. 76158, "A Resolution of the Council of the City of San Jose Repealing Resolution No. 76087 and Calling and Giving Notice of, on its Own Motion, the Submission to the Electors of the City of San Jose, at a Special Municipal Election to be Held on June 5, 2012, a Ballot Measure Proposal to Amend the San Jose City Charter to Add a New Article XV-A to Reform City Pensions and Benefits Provided to Current Employees and Establish Reduced Pensions and Benefits for New Employees and to Place Other Limitations on Pensions and Benefits." [SJRJN000090 – 000094]		Admit
5106	September 7, 2012	Memorandum from Debra Figone to Mayor and City Council re: Background on Compensation Reductions. [SJ001642 – 001647]	Auth	
5107	March 26, 2013	"Stipulation and Order re: Implementation of Measure B in Connection with Trial Set for June 17,		Admit

History of Measure B [5100 series]				
Ex. No	Date	Description	ID	EV
		2013.” [SJRJN000605-000609]		
5108	May 1, 2013	2013-2014 City Manager’s Operating Budget Message. [SJ001648 – 001677]		Admit
5109	February 2013	2013-2014 City Manager’s Budget Request & 2014-2018 Five-Year Forecast and Revenue Projections. [SJ003276 – 003332]		Admit
5110	February 14, 2011	Video clip from annual Budget Priority Setting Study Session.		Admit
5111	February 9, 2012	Memorandum from Debra Figone to Mayor and City Council regarding Retirement Projections Fact Sheet. [SJ003728-003746]		Admit
5112	March 22, 2012	Memorandum from Debra Figone to Mayor and City Council regarding Retirement Cost Projections. [SJ003747-003750]	Auth	
5113	N/A	Budget Balancing: Service Reductions/Eliminations presentation – pg. 9. [SJ003846]	Auth	
5114	N/A	Budget Balancing: Service Reductions/Eliminations presentation – pg. 10. [SJ003847]	Auth	
5115	N/A	Budget Balancing: Service Reductions/Eliminations presentation – pg. 11. [SJ003848]	Auth	
5116	N/A	Budget Balancing: Service Reductions/Eliminations presentation – pg. 12. [SJ003849]	Auth	
5117	November 10, 2010	Memorandum from Debra Figone to Mayor re: Recommendations on Labor Negotiations Direction. [SJ003765 – 003775]	Auth	
5118	March 12, 2010	Memorandum from Mayor Chuck Reed to City of San Jose City Council re: March Budget Message for Fiscal Year 2010-2011. [SJ003776 – 003802]	Auth	
5119	March 11, 2011	Memorandum from Mayor Chuck Reed to City of San Jose City Council re: March Budget Message for Fiscal Year 2011-	Auth	

History of Measure B [5100 series]				
Ex. No	Date	Description	ID	EV
		2012. [SJ003818 – 003838]		

City Charter [5200 series]				
Ex. No	Date	Description	ID	EV
5200	1915	The City of San Jose 1915 City Charter Amendment. [SJ001678 -001722]		Admit
5201	1925	The City of San Jose 1925 City Charter Amendment. [SJ001723 – 001726]		Admit
5202	1946	The City of San Jose 1946 City Charter Amendment. [SJ001727 – 001741]		Admit
5203	April 12, 1960	Ballot pamphlet for Charter Amendment – Proposition A, including “Argument in Favor of Proposition A.” [SJRJN000384 – 000386]		Admit
5204	1961	The City of San Jose 1961 City Charter Amendment. [SJ001742 – 001746]		Admit
5205	January 24, 1961	California Assembly Concurrent Resolution No. 17. [SJRJN000376 – 000383]		Admit
5206	May 26, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000495-000496]		Admit
5207	September 1, 1964	Letter from Manager Edward Grossheider to the Chairman of the Charter Revision Committee re: revision of wording pertaining to Section 1601 of the City Charter. [SJRJN000497]	Auth	
5208	September 1, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000498-000499]		Admit
5209	October 13, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000500-000501]		Admit
5210	October 13, 1964	Memorandum of Fire and Police Retirement Plan presented by District Chief Leonard Marks of San Jose Fire Department. [SJRJN000502]	Auth	
5211	October 20, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000503-000504]		Admit

City Charter [5200 series]				
Ex. No	Date	Description	ID	EV
5212	October 27, 1964	Letter from Manager Edward A. Grossheider to George Starbird, Chairman of the San Jose City Charter Committee re: recommendations for final draft of new proposed charter. [SJRJN000505-000506]	Auth	
5213	December 4, 1964	Letter from Retirement Committee of the Municipal Employees Federation to Charter Revision Committee re: "Inclusions of basic retirement benefits now in existence for the Federated City Employee Retirement System." [SJRJN000507]	Auth	
5214	December 8, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000508-000509]		Admit
5215	May 4, 1965	California Assembly Concurrent Resolution No. 104, approving Charter of the City of San Jose, and 1965 City Charter. [SJRJN000387 – 000450]		Admit
5216	November 2012	San Jose City Charter: In effect May 1965, As Amended through November 2012. [SJRJN000001 – 000089]		Admit
5217	November 10, 1964	The City of San Jose Charter Committee meeting minutes. [SJ003273 – 003275]		Admit

Municipal Code [5300 series]				
Ex. No	Date	Description	ID	EV
5300	December 12, 2012	City of San Jose Ordinance No. 29174, "An Ordinance of the City of San Jose Amending Various Sections of Chapter 3.28 of Title 3 of the San Jose Municipal Code to Clarify the City Charter Supersedes the Federated City Employees Retirement Plan in Event of Conflict, Clarify the Definition of Tier 2 Member, Discontinue the Supplemental Retiree Benefit Reserve, Clarify Actuarial Soundness is Determined Consistent with the California Constitution, and Make Additional Requirements for Mandatory Medicare Enrollment, to be effective January 4, 2013. [GURZA000748 – 000761]		Admit

Municipal Code [5300 series]				
Ex. No	Date	Description	ID	EV
5301	January 29, 2013	City of San Jose Ordinance No. 29198, "An Ordinance of the City of San Jose Amending Various Sections of Chapters 3.32 and 3.36 of Title 3 of the San Jose Municipal Code to Clarify the City Charter Supersedes the City of San Jose Police and Fire Retirement Plan in Event of Conflict, Discontinue the Supplemental Retiree Benefit Reserve, and Clarify Actuarial Soundness is Determined Consistent with the California Constitution, to be Effective March 1, 2013." [SJRJN000595-000604]		Admit
5302	Undated	San Jose Municipal Code, Chapter 3.28, "1975 Federated Employees Retirement Plan Sections 3.28.010 to 3.28.2770 [Current to June 30, 2012]. [SJRJN000112 – 000230]		Admit
5303	Undated	San Jose Municipal Code, Chapter 3.36 "1961 Police and Fire Department Retirement Plan," Sections 3.36.010 to 3.36.3760 [Current to June 30, 2012]. [SJRJN000231 – 000375]		Admit

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5400	May 12, 1971	Memorandum from City Manager Thomas Fletcher to City Council re: "Definition of Prior Service – Police and Fire Retirement Plan." [SJRJN000510-000511]	Auth	
5401	July 12, 1971	City of San Jose Resolution No. 40059, "A Resolution of the Council of the City of San Jose Requesting Board of Administration for Police and Fire Retirement Plan to Adjust Rates of Contribution for City and for Fire Department Members and Police Department Members of Police and Fire Department Retirement Plans." [SJRJN000512-000514]		Admit
5402	August 16, 1978	Letter from Actuary E. Allen Arnold, and Associate Actuary Christine Nelson to Retirement and Benefits Administrator	Auth	

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
		Edward Overton re: Police & Fire Contribution Rates. [SJRJN000519-000525]		
5403	June 30, 1979	Lawrence Mitchell & Associates, Inc. Consulting Actuaries' Actuarial Investigation and Valuation for the City of San Jose Police and Fire Department Retirement Plans. [SJRJN000526-000566]	Auth	
5404	July 3, 1979	City of San Jose Ordinance No. 19690, "An Ordinance of the City of San Jose Amending Topic 9 of Part 3A of Chapter 9 of Article II of the San Jose Municipal Code by Amending Section 2903.279 and Section 2903.280 to provide for increasing City's contribution for services rendered by members or persons prior to increase in the contribution rates." [SJRJN000515-000518]		Admit
5405	N/A	Withdrawn.		
5406	June 16, 2009	City of San Jose Resolution No. 74988, "A Resolution of the Council of the City of San Jose Approving Implementation of the Terms Contained in the City's Last, Best, and Final Offer to the Operating Engineers, Local No. 3, effective June 28, 2009." [GURZA000696]		Admit
5407	April 30, 2010	Letter from Randy Sekany to Mayor and City Council Members re: budget proposal submitted to Employee Relations. [SJ001747 - 001748]	Auth	
5408	April 30, 2010	Letter from Randy Sekany to Alex Gurza re: budget proposal. [SJ001749 - 001750]	Auth	
5409	May 14, 2010	IBEW Union Proposal to City to pay increased employee contribution rate. [GURZA000086-000087]	Auth	
5410	May 17, 2010	OE#3 Union Proposals to City to pay increased employee contribution rate. [GURZA000082-000085]	Auth	
5411	May 17, 2010	SJ POA Union Proposals to City to pay increased employee contribution rate. [GURZA000088-000090]	Auth	

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5412	May 17, 2010	OE#3 Proposal to the City of San Jose. [SJ001751]	Auth	
5413	May 25, 2010	Draft of Local 230 Settlement Proposal. [SJ001752 – 001753]	Auth	
5414	June 9, 2010	IAFF letter and proposal to City to pay increased employee contribution rate. [GURZA000091-000093]	Auth	
5415	June 11, 2010	OE3's Last Best and Final Offer to City of San Jose. [SJ001754]	Auth	
5416	June 11, 2010	Letter from William Pope to Gina Donnelly re: Last, Best and Final Offer. [SJ001755]	Auth	
5417	June 15, 2010	Association of Legal Professionals (ALP) – Resolution No. 75419 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000205 – 000217]	Auth	
5418	June 15, 2010	City of San Jose Ordinance No. 28752, "An Ordinance of the City of San Jose Amending Chapters 3.28 and 3.44 of Title 3 of the San Jose Municipal Code to Add New Sections 3.28.755, 3.28955, and 3.44.105 and Amend Sections 3.28.770 and 3.28.780 to Implement Revisions in Employee and Employer Retirement Contributions for the Federated City Employees Retirement System." [HAR 191-196]		Admit
5419	June 17, 2010	City Council Agenda attaching transcript of Christopher Platten's comments to City Council. [GURZA000096 – 000097]	Auth	
5420	June 17, 2010	Coalition of Unions agreement to make additional pension contributions. [GURZA000094-000095]	Auth	
5421	June 18, 2010	Coalition of Union Proposal offered to City. [GURZA000081]	Auth	
5422	June 21, 2010	Letter from Sekany to Gurza re: IAFF Local 230 and City of San Jose (2009 MOU Negotiations). [SJ001756 – 001758]	Auth	

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5423	July 1, 2010	Letter from Sekany to Gurza re: San Jose Fire Fighters Local 230 Contract Proposal of June 21, 2010. [SJ001759 – 001761]	Auth	
5424	July 15, 2010	San Jose Firefighter Settlement Proposal. [SJ001762 – 001764]	Auth	
5425	January 18, 2011	Memorandum from Jeff Welsh regarding San Jose Firefighters, IAFF Local Settlement Proposal. [SJ001765 – 001769]	Auth	
5426	February 1, 2011	Memorandum from Jeff Welsh regarding San Jose Firefighters, IAFF Local Settlement Proposal. [SJ001770 – 001775]	Auth	
5427	March 3, 2011	City of San Jose and San Jose Firefighters, Local 230 Tentative Agreement for the term of July 1, 2009 thru June 30, 2013. [SJ001776 – 001811]	Auth	
5428	March 7, 2011	Email from union representative Nancy Ostrowski (IPFTE Local 21). [GURZA000613]	Auth	
5429	Undated	Chart of Firefighters Association Proposals re: contribution rates. [SJ001812 – 001818]	Auth	
5430	Undated	San Jose Firefighters, IAFF Local 230 Settlement Proposal –Last Best Final for the term of July 1, 2009 thru June 30, 2013. [SJ001819 – 001823]	Auth	
5431		Withdrawn		
5432	May 16, 2013	2013 POA Negotiations – City Package Proposal for Settlement. [SJ003751-003756]	Auth	
5433	June 20, 2013	2013 OE#3 Negotiations City Package Proposal C*. [SJ003757-003764]	Auth	
5434	February 4, 1996 to February 3, 2000	Memorandum of Agreement on Retirement Benefits between The City of San Jose, International Association of Firefighters, Local 230 and The San Jose Police Officers' Association. [SJ003839 –	Auth	

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
		003845]		
5435	June 17, 2010	Video clip of Christopher Platten's comments to City Council.	Auth	

Resolutions approving Agreements [5450 series]				
Ex. No	Date	Description	ID	EV
5450	April 27, 2010	Association of Building, Mechanical and Electrical Inspectors (ABMEI) – Resolution No. 75362 approving and terms of Last, Best and Final Offer, effective June 27, 2010. [GURZA000098-000120]		Admit
5451	May 31, 2011	ABMEI – Resolution No. 75810 approving and terms of MOA (7/1/11-6/30/13). [GURZA000121-000144]		Admit
5452	June 22, 2010	Association of Engineers and Architects (AEA) – Resolution No. 75451 approving and terms of MOA (7/1/10-6/30/11). [GURZA000145-000174]	Auth	
5453	April 19, 2011	AEA – Resolution No. 75777 approving and terms of MOA (7/1/11-6/30/13). [GURZA000175-000204]	Auth	
5454	June 15, 2010	Association of Legal Professionals (ALP) – Resolution No. 75419 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000205 – 000217]		Admit
5455	May 31, 2011	ALP – Resolution No. 75813 approving and terms of Agreement (7/1/11 – 6/30/12). [GURZA000218 – 000228]		Admit
5456	June 22, 2010	Association of Maintenance Supervisory Personnel (AMSP) – Resolution No. 75452 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000229 – 000234]		Admit
5457	April 19, 2011	AMSP – Resolution No. 75778 approving and terms of Agreement (7/1/11 – 6/30/13). [GURZA000235 – 000259]		Admit

5458	June 22, 2010	City Association of Management Personnel (CAMP) – Resolution No. 75449 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000260 – 000265]		Admit
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Resolutions approving Agreements [5450 series]				
Ex. No	Date	Description	ID	EV
5459	April 19, 2011	CAMP – Resolution No. 75779 approving and terms of Agreement. (7/1/11 – 6/30/13). [GURZA000266 – 000290]		Admit
5460	October 21, 2008	Confidential Employees' Organization (CEO), AFSCME 101 – Resolution No. 74635 approving and terms of MOA (9/21/08 – 9/17/11). [GURZA000291 – 000305]		Admit
5461	May 31, 2011	CEO – Resolution No. 75815 approving and terms of Last, Best and Final Offer (9/18/11 – 9/15/12). [GURZA000306 – 000328]		Admit
5462	March 22, 2011	International Association of Firefighters (IAFF) – Resolution No. 75762 approving and terms of Agreement (7/1/09 – 6/30/13). [GURZA000329 – 000371]	Auth	
5463	March 22, 2011	IAFF – Resolution No. 75762 approving and terms of Agreement (7/1/09- 6/30/13). [GURZA000372 – 000414]	Auth	
5464	March 22, 2010	International Brotherhood of Electrical Workers, Local 332 (IBEW) – Resolution No. 75450 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000415 – 000425]		Admit
5465	May 31, 2011	IBEW – Resolution No. 75811 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000426 – 000448]		Admit
5466	June 22, 2010	Operating Engineers, Local No. 3 (OE#3) – Resolution No. 75453 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000449 – 000461]	Auth	

1	5467	May 31, 2011	OE#3 – Resolution No. 75812 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000462 – 000484]	Auth	
2					
3					
4	5468	August 5, 2008	Municipal Employees' Federation (MEF), AFSCME Local 101 – Resolution No. 74525 approving and terms of MOA (7/1/08 – 6/30/11). [GURZA000485 – 000503]		Admit
5					
6					
7					

Resolutions approving Agreements [5450 series]

Ex. No	Date	Description	ID	EV
9	5469	May 31, 2011	MEF – Resolution No. 75814 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000504 – 000527]	Admit
10				
11				
12	5470	August 3, 2010	San Jose Police Officers' Association (SJPOA) – Resolution No. 75507 approving and terms of MOA (7/1/10 – 6/30/11). [GURZA000528 – 000561]	Admit
13				
14	5471	June 14, 2011	SJPOA – Resolution No. 75846 approving and terms of Agreement (7/1/11 – 6/30/12). [GURZA000562 – 000590]	Admit
15				
16				
17	5472	January 10, 2012	SJPOA – Resolution No. 76118 approving and terms of Agreement (7/1/11 – 6/30/13). [GURZA000591 – 000596]	Admit
18				
19	5473	April 27, 2010	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75363 approving Resolution for 4.75% salary reduction, effective June 27, 2010. [GURZA000597 – 000602]	Admit
20				
21				
22				
23				
24	5474	June 17, 2010	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75436 approving Resolution for 5.4% salary reduction, effective June 27, 2010. [GURZA000603 – 000607]	Admit
25				
26				
27				
28				

5475	April 19, 2011	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75780 approving Agreement for 4.75% and 5.4% salary reductions. [GURZA000608 – 000612]		Admit
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Retiree Healthcare [5500 series]				
Ex. No	Date	Description	ID	EV
5500	February 24, 1988	Memorandum from Federated Board of Administration to Mayor and City Council regarding Federated Retirement Benefit Increases. [SJRJN000457 – 000460]		Admit
5501	January 12, 2007	Letter from Paul Angelo and Andy Yeung to Edward Overton regarding City of San Jose Police and Fire Department Medical and Dental Insurance Plan GASB Statements No. 43 and No. 45 Results Using Requested Assumptions. [GURZA000637 – 000645]	Auth	
5502	July 2007	Report from Bartel and Associates, LLC regarding City of San Jose Retiree Healthcare Plan, June 30, 2007 – Actuarial Valuation Federated City Employees. [GURZA000629 – 000636]		Admit
5503	July 24, 2007	Memorandum from Alex Gurza, Mark Danaj, and Scott Johnson to Honorable Mayor and City Council regarding Retiree Healthcare. [GURZA000614 – 000628]	Auth	
5504	February 24, 2009	Resolution No. 74803 approving and terms of Agreement between City and SJPOA re: Retiree Healthcare Funding. [GURZA000673 – 000686]		Admit
5505	April 7, 2009	Memorandum from Alex Gurza to Honorable Mayor and City Council regarding Retiree Healthcare Funding. [GURZA000646 – 000670]	Auth	
5506	April 21, 2009	City of San Jose Resolution No. 74882, “A Resolution of the Council of the City of San Jose Approving Agreements between the City of San Jose and Several Bargaining Units regarding Retiree Healthcare Funding, and Implementing Retiree Healthcare Funding for Units 99		Admit

Retiree Healthcare [5500 series]				
Ex. No	Date	Description	ID	EV
		and 82." [GURZA000671 – 000672]		
5507	June 1, 2009	Last, Best and Final Offer from City to OE#3. [GURZA000687 – 000000695]		Admit
5508	June 11, 2013	Memorandum from Alex Gurza to Mayor and City Council re: Implementation of Changes to Retiree Healthcare and Four-Tier Insurance Premium Rates for the Bargaining Units Representing Employees in the Federated City Employees' Retirement System and Modifications for Employees in Unit 99. [SJ001824 – 001876]		Admit
5509	N/A	Withdrawn, see Ex. 5508.		

Low Cost Plan Documents [5600 series]				
Ex. No	Date	Description	ID	EV
5600	April 17, 2012	Memorandum from Debra Figone to Mayor and City Council re: Adoption of a resolution approving benefit changes for executive management and professional employee. [SJ001877 – 001889]		Admit
5601	April 27, 2012	Memorandum from Debra Figone to Mayor and City Council re: Supplemental Information for Items 3.3 – 3.12. [SJ001890 – 00SJ001893]		Admit
5602	June 12, 2012	City of San Jose Minutes of the City Council. [SJ001894 – 001923]	Auth	
5603	Undated	City of San Jose Summary of Benefit Plan Changes effective January 1, 2013. [SJ001924 – 001928]		Admit
5604	N/A	Health Insurance Premium Schedules. [SJ003333 – 003335]		Admit
5605	October 26, 2012	Health Insurance Plan Descriptions. [SJ003336 – 003346]		Admit

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV
5700	November 22, 1985	Letter from Coates Herfurth & England, Inc. to Retirement and Benefits Administrator regarding SB650 Study. [SJRJN000489 – 000492]	Auth	
5701	April 25, 1986	Memorandum from Federated Retirement Board to Honorable Mayor and City Council regarding Supplemental Retiree Benefits Reserve. [SJRJN000493 – 000494]		Admit
5702	May 6, 1986	Memorandum from Fran Galloni to Honorable Mayor and City Council regarding Retirement Benefit Increase. [SJRJN000451 – 000452]	Auth	
5703	February 24, 1988	Memorandum from Frances Galloni to Mayor and City Council regarding Administration's Report on Federated Retirement Benefit Increases. [SJRJN000455 – 000456]		Admit
5704	March 21, 1988	Memorandum from Joan Gallo to Mayor and City Council regarding Benefit Increases – Federated Retirement System and possible elimination of SRBR. [SJRJN000453 – 000454]		Admit
5705	January 29, 2002	City of San Jose Resolution No. 70822, "A Resolution of the Council of the City of San Jose Approving the Methodology for the Distribution of Moneys in the Supplemental Retiree Benefit Reserve of the Police and Fire Department Retirement Fund." [SJRJN000484 – 000488]		Admit
5706	December 16, 2003	City of San Jose Resolution No. 71870, "A Resolution of the Council of the City of San Jose Approving the Methodology for the Distribution of Moneys in the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund." [SJ001929 – 001936]		Admit
5707	October 22, 2010	Memorandum from Debra Figone to Honorable Mayor and City Council regarding Suspension of SRBR Payments. [GURZA000697 – 000722]		Admit

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV
5708	November 16, 2010	City of San Jose Resolution No. 75635, "A Resolution of the Council of the City of San Jose Amending and Restating the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund, to Suspend the Distribution of Funds from the Reserve During Fiscal Year 2010-2011. [SJRJN000461 – 000471]		Admit
5709	May 13, 2011	Memorandum from Figone to Honorable Mayor and City Council regarding Continued Suspension of SRBR Payments. [GURZA000723 – 000727]		Admit
5710	August 23, 2011	Tentative Agreement with AMBEI regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000743]		Admit
5711	August 23, 2011	Tentative Agreement with IBEW regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000744]		Admit
5712	August 23, 2011	Tentative Agreement with OE#3 regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000745]	Auth	
5713	August 23, 2011	Tentative Agreement with CEO regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000746]	Auth	
5714	August 23, 2011	Tentative Agreement with MEF regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000747]	Auth	
5715	January 13, 2012	Letter from William Hallmark and Anne Harper to Russell Crosby regarding Federated Employees Retirement Plan – Supplemental Retiree Benefit Reserve as of June 30, 2011. [GURZA000734 – 000738]		Admit
5716	March 29, 2012	Letter from Hallmark and Joshua Davis to Russell Crosby regarding City of San Jose Police and Fire Department Retirement Plan – Supplemental Retiree Benefit Reserve as of June 30, 2011. [GURZA000739 – 000742]	Auth	
5717	April 9, 2012	Memorandum from Figone to Honorable Mayor and City Council regarding Suspension of SRBR Payments.		Admit

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV
		[GURZA000728 – 000733]		
5718	April 24, 2012	City of San Jose Resolution No. 76204, "A Resolution of the Council of the City of San Jose Amending and Restating Resolution No. 75635 Regarding the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund, to Suspend the Distribution of Funds From the Reserve Through Fiscal Year 2012 – 2013. [SJRJN000472 – 000483]		Admit
5719	June 26, 1986	Memorandum from Edward Overton to Members of the Federated Employees Retirement System regarding New Retirement Benefits and Lower Contribution Rates. [SJ002168]	Auth	

Disability Retirement Documents [5800 series]				
Ex. No	Date	Description	ID	EV
5800	N/A	Return to Work Policy. [SJ003347 – 003349]	Auth	
5801	N/A	Long Term Disability Insurance Plan Documents. [SJ003479 – 003492]	Auth	
5802	N/A	Long Term Disability Proposal. [SJ003350 – 003352]	Auth	
5803	N/A	Excerpts from Employee Benefits Handbook. [SJ003493 – 003500]		Admit

Actuarial Documents [5900 series]				
Ex. No	Date	Description	ID	EV
5900	February 8, 2012	Letter from Gene Kalwarski and Margaret Tempkin to Russell Crosby regarding 5 – year Budget Projections for Federated. [GURZA000770 – 000772]		Admit
5901	February 21, 2012	Letter from Kalwarski and Tempkin to Crosby regarding 5-year Budget Projections for Police & Fire. [GURZA000773 - 000778]		Admit
5902	December 2012	Cheiron's Actuarial Valuation regarding Federated City Employees' Retirement System, June 30, 2012 to December 2012. [GURZA000779 – 000837]		Admit
5903	December 2012	Cheiron's Actuarial Valuation regarding City of San Jose Police and Fire Department Retirement Plan, June 30, 2012 to December 2012. [GURZA000838 – 000890]		Admit
5904	January 9, 2013	Cheiron letter to City of San Jose Board of Administration re: 5-year Budget Projections for Federated. [SJ001937 – 001939]		Admit
5905	January 17, 2013	Cheiron's OPEB Actuarial Valuation Results regarding San Jose Federated City Employees' Retirement System, June 30, 2012. [GURZA000891 – 000905]		No stip (power-point, not a report)
5906	January 30, 2013	Cheiron letter to City of San Jose Board of Administration re: 5-year Budget Projections for Police & Fire. [SJ001940 – 001945]		Admit
5907	February 7, 2013	Cheiron's OPEB Actuarial Valuation Results regarding City of San Jose Police and Fire Department Retirement System, June 30, 2012. [GURZA000906 – 000924]		Admit
5908	June 30, 2012	City of San Jose Federated City Employees' Retirement System Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2012. [SJ003353 – 003478]		Admit
5909	June 30, 2012	City of San Jose Police and Fire Department Comprehensive Annual Financial Report for the Fiscal Year Ended		Admit

Actuarial Documents [5900 series]				
Ex. No	Date	Description	ID	EV
		June 30, 2012. [SJ003501 – 003632]		

Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
6000	N/A	Chart Depicting Service Retirement Benefit (Police and Fire).		
6001	N/A	Chart Depicting Service Retirements (Police and Fire Plan) – Plaintiffs and witnesses.		
6002	N/A	Ten Highest Annual Pensions – Police and Fire Plan.		
6003	N/A	Withdrawn.		
6004	N/A	Chart Depicting Service Retirement Benefit (Federated Plan).		
6005	N/A	Chart Depicting Examples of Service Retirements (Federated Plan) – Plaintiffs and witnesses.		
6006	N/A	Ten Highest Annual Pensions – Federated Members.		
6007	N/A	Withdrawn.		
6008	N/A	Retirement Cost Increases: FY 2001-2002 to FY 2011-2012.		
6009	N/A	10 Years of Budget Deficits – How Did We Get Here?		
6010	N/A	Contribution Rates (based on June 30, 2012 Valuation) – Police and Fire: 2003-2014.	Auth	
6011	N/A	Contribution Rates – Federated Plan: 2003-2014.	Auth	
6012	N/A	Retirement Contribution Rates (Police and Fire) – 2011 and 2012 Valuations.	Auth	
6013	N/A	Retirement Contribution Rates (Federated) – 2011 and 2012 Valuations.		
6014	N/A	Withdrawn.		

1	Demonstrative Exhibits [6000 Series]				
2	Ex. No	Date	Description	ID	EV
3	6015	N/A	Withdrawn.		
4	6016	N/A	\$670 Million in Cumulative General Fund Shortfalls Balanced through 2012-2013.		
5	6017	N/A	Withdrawn		
6	6018	N/A	Average Total Compensation – All Sworn Police Employees.		
7	6019	N/A	Total Compensation – Fire Employees (Plaintiffs)		
8	6020	N/A	Total Compensation – Miscellaneous Employees (Plaintiffs and Designated witnesses).		
9	6021	N/A	Police Department: Budget and Staffing – FY 2001-02 to FY 2011-2012.		
10	6022	N/A	Withdrawn.		
11	6023	N/A	Compensation Concessions (FY 2010-11; 2011-12; 2012-13).		
12	6024	N/A	Withdrawn.		
13	6025	N/A	Withdrawn.		
14	6026	N/A	\$20 Million in Savings Subject to Litigation.		
15	6027	N/A	Contribution Rates – 1965 Charter Police and Fire/ Federated.		
16	6028	N/A	Chronology of Charter Progression (Reservation of Rights).		
17	6029	N/A	Unfunded Liabilities – Federated.		
18	6030	N/A	Unfunded Liabilities – Police and Fire.		
19	6031	N/A	MOU Excerpts (Contributions to Pension – Police and AEA – 2010 – 2011).		
20	6032	N/A	MOU Excerpts (Contributions to Retiree Health – Police and AEA – 2010 – 2011).		

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Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
6033	N/A	Disability Flow Chart.		
6034	N/A	Withdrawn.		
6035	N/A	Benefit Payments Grew Seven Fold Over 20 Years.		
6036	N/A	Pension Benefit Payments Have Exceeded Contributions Since 2001.		
6037	N/A	Funded Ratios Have Fallen.		
6038	N/A	The City's Contribution Rates for Pension and Retiree Healthcare are Projected to Rise Dramatically.		
6039	N/A	Retroactive Pension Benefit Enhancements Added to the Unfunded Liability.		
6040	N/A	Withdrawn.		
6041	N/A	Withdrawn.		
6042	N/A	Withdrawn.		
6043	N/A	Withdrawn.		
6044	N/A	Withdrawn.		
6045	N/A	Withdrawn.		
6046	N/A	Withdrawn.		
6047	N/A	Withdrawn.		
6048	N/A	Withdrawn.		
6049	N/A	Retirement Benefits/Measure B impact [John Mukhar].		
6050	N/A	Withdrawn.		
6051	N/A	Withdrawn.		
6052	N/A	Withdrawn.		
6053	N/A	Withdrawn.		
6054	N/A	Withdrawn.		

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Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
6055	N/A	Retirement Benefits/Measure B Impact [Robert Sapient].		
6056	N/A	Withdrawn.		
6057	N/A	Withdrawn.		
6058	N/A	Withdrawn.		
6059	N/A	SRBR – Unforeseen Consequences.		
6060	N/A	Service vs. Disability Retirement Chart.		
6061	N/A	Compensation Pay Cut vs. Retirement Contribution.		
6062				
6063				
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6066				
6067		Union Opp Brief 2/11/98	C.P.	
6068	pg 14 J.W.	Union opp Brief 2/11/98		Adm.'t
6069	pg 15 J.W.	Union's Initial Post Ring Def. 8/10/97		Adm.'t
6070				
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Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
6079				
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Other California City Charters [6100 series]				
Ex. No	Date	Description	ID	EV
6100	N/A	San Diego City Charter. [SJ003633 – 003645]	Auth	
6101	N/A	1996 San Francisco City Charter Preamble. [SJ003646 – 003648]	Auth	
6102	N/A	Proposition C, City Pension and Health Care Benefits. [SJ003649 – 003727]	Auth	

SJPOA EXHIBITS

San Jose Police Officers' Association withdraws the following exhibits: 5, 27, 29, 36, and 37. In addition, the parties stipulate to the following.

SJPOA EXHIBIT No.	DESCRIPTION	ID	EV
1	Chapter 5, Statutes of California, First Extraordinary Session 1946 pertaining to Assembly Concurrent Resolution No. 4 – Relative to approving certain amendments to the Charter of the City of San Jose		Admit
2	Chapter 20, Statutes of California 1960 and 1961, Volume 2, pertaining to Assembly Concurrent Resolution No. 17 – Approving a certain amendment to the charter of the City of San Jose		Admit
3	The City of San Jose Resolution No. 40129 (1971)		Admit
4	The City of San Jose Ordinance No. 19690 (1979)		Admit
6	San Jose City Ordinance No. 21686 (1984)		Admit
7	Chapter 10 of the San Jose Police and Fire Department Retirement Plan Handbook - Fall 1995		Admit
8	Chapter 10 of the San Jose Police and Fire Department Retirement Plan Handbook - Fall 1997		Admit
9	San Jose City Ordinance No. 25615 (1998)		Admit
11	A recruiting flyer issued by the City in 2002 states: "Retirement options begin with 20 years of service and age 55 for 50% of salary. Regular retirement is 25 years of service and age 50 for 65% of salary. 30 years of service provides an 85% retirement with a guaranteed cost of living raise of 3% every year after retirement for all plans."		Admit
12	Memorandum of Agreement 2004-2008		Admit
13	The City of San Jose Retirement System Newsletter, April 2005	Auth	
14	San Jose City Ordinance 27721 (2006)		Admit
15	Excerpts from the Notes to Financial		Admit

1		Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2007		
2	16	Excerpts from the Notes to Financial Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2008		Admit
3	17	Excerpts from the Notes to Financial Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2009		Admit
4	18	Excerpts from the Notes to Financial Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2010		Admit
5	19	Printout from City of San Jose webpage: City of San Jose Retirement Benefits Frequently Asked Questions, September 2010	Auth	
6	20	Memo from Alex Gurza, the City's Director of Employee Relations, to Russell Crosby, the City's Director of Retirement Services		Admit
7	23	Excerpts from the Notes to Financial Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2011		Admit
8	25	John Robb's individual annual retirement statement from Police and Fire Retirement Fund for FY 2010-2011.		Admit
9	26	March 2012 Printout from San Jose Police Department "Salary and Benefits" webpage		Admit
10	30	Recruiting flyers and booklets stating that Police Officers are provided pensions from City of San Jose's Retirement Plan. Several	Auth	

	flyers state: "Up to 90% of Salary for Retirement (30 years of service) with 3% Annual Cost of Living Increase."		
31	San Jose Municipal Code Chapter 3.36		Admit
32	Retirement Handbook excerpts, as pertain to: Disability Retirement		Admit
34	Measure B Election Materials		Admit
35	Bogue Arbitration Award re City of San Jose and San Jose Police Officers' Association involving negotiations impasse over retirement benefits		Admit
38	San Jose Resolution 76158 and Full Text of Measure B		Admitted as 5101
39	City Charter May 1965-November 2012 with Legislative History Document		Admit
40	San Jose Municipal Code Chapter 3.44		Admit
42	San Jose Ordinance No. 29198 re Elimination of SRBR from Police and Fire Retirement Plan		Admitted as 5301
43	Charter Revision Committee Minutes dated February 18, 1959		Admit
44	Excerpts from Statutes of California, Chapter 76, Assembly Concurrent Resolution No. 104 - Approving the Charter of the City of San Jose, a municipal corporation of the State of California, voted for and ratified by the qualified voters of said city at a municipal election held therein on the 13 th day of April 1965 from the 1965 Regular Session		Admit (5216)
45	Ballot Arguments in favor of and against Proposition One		Admit
46	Charter Revision Committee Minutes dated July 14, 1959		Admit
47	Charter Revision Committee Minutes dated August 11, 1959		Admit
48	Memorandum of Agreement on Retirement Benefits for the Period February 4, 1996 through February 3, 2000		Admit
49	Memorandum of Agreement on Retirement Benefits for the Period February 4, 2000 through June 30, 2004		Admit

24 San Jose Pension Problems - AUTHENTICATION

CBM-SF/SF596061.2

-27-

STIPULATION AND [PROPOSED] ORDER REGARDING TRIAL EXHIBITS

CP
VS
A.W.
K9

8/22/04 CS

1 **AFSCME LOCAL 101 EXHIBITS**

2 1. The parties stipulate to the admissibility of the following AFSCME trial
3 exhibits: 300-320, 323-327, 363-364, 367, 370, 373, 397-400, 401 from Bate Numbers
4 AFSCME2923-2974, 402 from Bate Numbers 2985-3037 and 3044-3045, 405-409, 415-
5 421, 443-446, 453, 455, 457, 468-470, 473, and 475.

6 2. The parties stipulate to the authenticity of the following AFSCME trial
7 exhibits: 328-358, 361-362, 365-366, 371, 410-411, 413, 414 from Bate Numbers
8 AFSCME4069-4010, 441, 451, and 511-521.

9 3. AFSCME withdraws the following trial exhibits: 372, 404, 412, 442, 452,
10 454, 456, 458-467, 471, 474, 476, 477-480, 500-502, and 522.

11 4. AFSCME Exhibit 357, includes exhibit Bates Numbers AFSCME1485-
12 1496, and all other pages are withdrawn.

1 Dated: July 26, 2013

2 MEYERS, NAVE, RIBACK, SILVER &
3 WILSON

4
5 By 

Arthur A. Hartinger

Linda Ross

Geoffrey Spellberg

6 Attorneys for Defendant and Cross-
7 Complainant City of San Jose

8
9 Dated: July __, 2013

10 WYLIE, McBRIDE, PLATTEN & RENNER

11
12 By 

John McBride

Christopher E. Platten

13 Attorneys for Plaintiffs and Cross-Defendants in
14 the *Sapien*, *Harris*, and *Mukhar* cases

15
16 Dated: July 25, 2013

17 BEESON, TAYOR & BODINE, APC

18
19 By 

Teague P. Paterson

Vishtasp M. Soroushian

20 Attorneys for Plaintiffs and Cross-Defendants in
21 *AFSCME*, Local 101

22
23
24 Dated: July 26, 2013

25 SILVER, HADDEN, SILVER, WEXLER &
26 LEVINE

27
28 By 

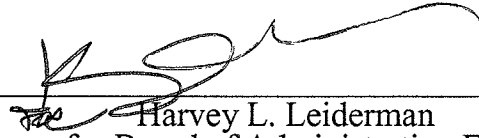
Stephen H. Silver

Jacob Kalinski
Attorneys for Plaintiff San Jose Retired
Employees' Association

Dated: July 26, 2013

REED SMITH, LLP

By

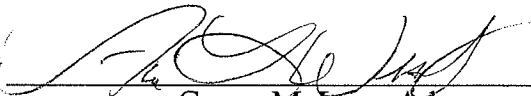


Harvey L. Leiderman
Attorneys for Board of Administration For Police
and Fire Department Retirement Plan of City of
San Jose and Federated City Employees
Retirement System, Necessary Party in Interest

Dated: July 26, 2013

CARROLL, BURDICK & McDONOUGH LLP

By



Gregg McLean Adam
Gonzalo C. Martinez
Amber L. West
Attorneys for Plaintiff and Cross-Defendant
San Jose Police Officers' Association

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ORDER

The foregoing Stipulation having been received and good cause appearing,
IT IS SO ORDERED:

Dated: July 29, 2013



Hon. Patricia M. Lucas
Judge of the Superior Court

EXHIBIT 4

1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
3 **BEESON, TAYER & BODINE, APC**
4 483 Ninth Street, 2nd Floor
5 Oakland, CA 94607-4051
6 Telephone: (510) 625-9700
Facsimile: (510) 625-8275
Email: TPaterson@beesontayer.com
VSoroushian@beesontayer.com

7 Attorneys for Plaintiff and Petitioner,
8 AFSCME LOCAL 101

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SANTA CLARA**

11 AMERICAN FEDERATION OF STATE,
12 COUNTY, AND MUNICIPAL EMPLOYEES,
13 LOCAL 101, on behalf of its members,

14 Plaintiff and Petitioner,

15 v.

16 CITY OF SAN JOSÉ and DEBRA FIGONE in
17 her official capacity as City Manager,

18 Defendants and Respondents,

19 THE BOARD OF ADMINISTRATION FOR
20 THE FEDERATED CITY EMPLOYEES
21 RETIREMENT PLAN,

22 Necessary Party In Interest.

Case No. 1-12-CV-227864;
Consolidated with Case No. 1-12-CV-225926
[Consolidated with cases, nos. 1-12-CV-225928,
1-12-CV-226574 and 1-12-CV227864]

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDAMUS**

1. Unconstitutional Impairment of Contract
(Cal. Const. Art. I § 9 & Civ. Code § 52.1)
2. Unconstitutional Bill of Attainder
(Cal. Const. Art. I § 9 & Civ. Code § 52.1)
3. Unconstitutional Taking of Private Property
(Cal. Const. Art. I § 19 & Civ. Code § 52.1)
4. Unconstitutional Taking of Private Property
Without Due Process
(Cal. Const. art. I § 7 & Civ. Code § 52.1)
5. California Pension Protection Act
(Cal. Const. Art. XVI § 17 & Civ. Code § 52.1)
6. Violation of Constitutional Right to Petition
(Cal. Const. Art. I §§ 2 & 3 & Civ. Code § 52.1)
7. Illegal *Ultra Vires* Tax, Fee or Assessment
(Cal. Const. Art. I, § 7 & Civ. Code § 52.1)
8. Promissory Estoppel and Equitable Estoppel
9. Request for Declaratory Relief
(Code of Civ. Pro. § 1060)
10. Request for Injunctive Relief
(Code of Civ. Pro. §§ 525, 526 & 526(a))
11. Petition for Writ of Mandate
(Code of Civ. Pro. § 1085)

1
2 Plaintiff American Federation of State, County, and Municipal Employees, Local 101 alleges
3 as follows:

4 I. INTRODUCTION

5 1. Plaintiff and petitioner ("Plaintiff" or "Petitioner") brings this suit for declaratory,
6 injunctive, and writ relief in order to declare unconstitutional under the California Constitution the
7 "Sustainable Retirement Benefits and Compensation Act" ("Act" or "Measure B"), approved by the
8 electorate of the City of San José ("City") on June 5, 2012, and to bar its implementation by
9 defendants and respondents ("Defendants" or "Respondents").

10 2. Plaintiff Local 101 of the American Federation of State, County, and Municipal
11 Employees ("AFSCME" or "Union") is the representative of certain groups of miscellaneous
12 employees employed by the City and who are members of the City's Federated City Employees
13 Retirement Plan (collectively referred to herein as "miscellaneous employees," "employees," or
14 "members").

15 3. Under the California Constitution, public employee pension benefits are deferred
16 compensation, and a public employee has a constitutionally-protected contractual and property right
17 to receive such benefits under the terms and conditions in effect at the time such employee accepts
18 employment.

19 4. A public employee's right to the benefits established under a pension plan vests upon
20 commencing employment, because the right to such benefits represents a forbearance of wages or
21 other compensation otherwise immediately earnable through the employee's ongoing service.

22 5. These rights are vested and cannot be reduced or eliminated without impairing this
23 constitutionally-protected contractual obligation and property right.

24 6. Under California law, a right to retiree health benefits and/or benefits in the form of a
25 post-retirement cost of living adjustments ("COLA") may also vest by implication. The resulting
26 contract and property right to receive these forms of benefits, on terms substantially equivalent to
27 those offered by the public employer, similarly arises upon acceptance or continuation of
28

1 employment. Once vested, they cannot be reduced or eliminated without impairing this
2 constitutionally-protected contractual obligation.

3 7. In a memorandum dated December 1, 2011, City Mayor Chuck Reed submitted to the
4 City Council a series of recommendations. In relevant part, he recommended that the City Council
5 refrain from declaring a "Fiscal and Service Level Emergency," and further recommended the City
6 Council adopt a resolution calling for a municipal election on June 5, 2012, for the purpose of placing
7 on the ballot an amendment to the City Charter's ("Charter") provisions governing City employee
8 retirement security.

9 8. By memorandum dated February 21, 2012, City Manager Debra Figone proposed to
10 the Mayor and City Council an Act providing for such amendments to the City Charter, authorizing
11 promulgation of ordinances for the purpose of, *inter alia*, reducing City employee retirement security
12 and reducing wages for City employees who "choose" to retain the level of retirement security
13 promised to them (and for which they have contributed a portion of their wages). Attached to the
14 memorandum were the terms of the Act proposed for placement on the ballot.

15 9. The proposal also called for convening a June 5, 2012 special municipal election for
16 the purpose of placing the Act on the ballot for referendum (as amendments to the City Charter must
17 be approved by the City's electorate).

18 10. On March 6, 2012, the City Council adopted the proposal and directed placement of
19 the Act attached thereto on the June 5, 2012 Ballot.

20 11. The Act was subsequently designated "Measure B" on the ballot (hereinafter referred
21 to as "Measure B.")

22 12. On June 5, 2012, the City electorate passed Measure B by referendum.

23 13. On or about July 5, 2012, the City Clerk certified the results of the June 5 election,
24 including passage of Measure B.

25 14. Among other things, Measure B purports to amend the City Charter such that vested
26 employees' pension benefits will be reduced and additional obligations on the part of employees will
27 be incurred with respect to the City's obligation to fund the retirement security it has promised.
28

1 15. As applied to current employees participating in the Federated City Employees
2 Retirement System, Measure B violates the California Constitution because it substantially impairs
3 the affected employees' right to retirement benefits that vested when they commenced employment
4 and/or continued their employment with the City.

5 16. For example, Measure B violates the California Constitution with respect to current
6 employees because it, *inter alia*:

7 a. Reduces and eliminates portions of employee retirement benefits that are or have
8 become vested;

9 b. Imposes conditions subsequent on the right to receive retirement benefits already
10 earned;

11 c. Is an unconstitutional bill of attainder, as it shifts the burden of financing public debt
12 upon a small class of private parties, and its purpose is to punish such individuals for refusal to
13 relinquish their constitutionally-protected rights and property;

14 d. Constitutes an unconstitutional taking of private property for public use without
15 providing the affected employees with just compensation;

16 e. Constitutes an unconstitutional taking of private property for public use without
17 affording the affected employees with substantive due process;

18 f. Is an unconstitutional retroactive law as it subjects employees to liabilities previously
19 incurred by the City, and obligates active employees to fund liabilities previously incurred by the
20 City with respect to its retiree health obligations;

21 g. Is unconstitutional because it violates the "California Pension Protection Act";

22 h. Violates employee-members' constitutional right to petition the courts by imposing a
23 penalty on employee-members who successfully challenge the legality of the Act through a "poison
24 pill" provision; and

25 i. Imposes an illegal and improper tax by imposing on a specific group of individuals an
26 excise of wages for the purpose of funding the City's general obligations, and such tax or excise is
27 targeted at those individuals who can neither (i) afford to relinquish their constitutionally-protected
28

1 rights to a pension they have earned; or (ii) choose not to forego their constitutionally-protected right
2 to receive the pension they have earned

3 17. Additionally, the City should be prohibited from implementing Measure B pursuant to
4 the common law doctrines of promissory estoppel and equitable estoppel.

5 18. Measure B, if implemented, violates the law as summarized above and further detailed
6 in the allegations below.

7 **II. VENUE/JURISDICTION**

8 19. Petitioner seeks declaratory relief pursuant to California Code of Civil Procedure
9 section 1060.

10 20. Petitioner seeks injunctive relief pursuant to Code of Civil Procedure sections 526 and
11 527 and Civil Code section 52.1.

12 21. This court has jurisdiction over the writ relief requested in this proceeding under Code
13 of Civil Procedure section 1085.

14 22. This action is brought under, and seeks to rectify violations of, the laws of the State of
15 California including its Constitution.

16 23. All parties exist and reside within the County of Santa Clara, and the acts and/or
17 omissions complained of took place within the County of Santa Clara, making this Court the
18 appropriate venue for this action.

19 **III. THE PARTIES**

20 24. Petitioner and Plaintiff AFSCME Local 101 is an unincorporated membership
21 association, and a labor organization as defined by Government Code section 3501.

22 25. AFSCME Local 101, including its affiliated Municipal Employees' Federation
23 ("MEF") and Confidential Employees' Organization ("CEO"), is the recognized exclusive bargaining
24 representative for certain non-managerial employees of the defendant and respondent City of San
25 José.

26 26. AFSCME sues on behalf of, and in the interest of, its members employed by the City.
27 Such members are miscellaneous employees and are members of the City's Federated City
28 Employees Retirement System.

27. Measure B purports to affect and substantially impair the rights of AFSCME's members as alleged herein.

28. Defendant and Respondent City of San José is a chartered municipal corporation, and an instrumentality of the State of California, which operates under the authority of the California Constitution and the San José City Charter.

29. Defendant and respondent Debra Figone is sued in her official capacity as City Manager of the City of San José. The City Charter designates the City Manager as the City's chief administrative officer responsible to the City Council for the administration of the City's affairs placed under her charge. Ms. Figone's duties include but are not limited to executing all laws, City Charter provisions, and any acts of the City Council which are subject to enforcement by her subordinates. Executing Measure B is amongst her duties.

30. The Board of Administration for the Federated City Employees Retirement System (“Board”) is the Necessary Party in Interest in this case and is appointed by the City Council. The Board is responsible for managing, administering, and controlling the Federated City Employees Retirement System and the retirement fund. (California Constitution, art. XVI, sect. 17; San Jose Municipal Code (“SJMC”) § 3.28.100.) Action on the part of the Board is required in order to bring the Federated City Employees Retirement System within compliance with Measure B.

IV. FACTUAL ALLEGATIONS

A. THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM

31. Prior to Measure B, and at all times relevant hereto, the City Charter provided for a defined benefit pension plan, and set forth a duty on the part of the City to “create[], establish[] and maintain[] ... a retirement plan or plans for all [of its] officers and employees....” (Charter § 1500.)

32. The Charter further prescribed the minimum benefits due to its non-excluded miscellaneous employees and required the City Council to provide for pension and other benefits through ordinance. (Charter § 1505.) It also stated that in its discretion, the City Council “may grant greater or additional benefits.” (Charter § 1505(e).)

33. Pursuant to duly-enacted ordinances, Defendant adopted and established a Federated City Employees Retirement System providing for certain benefits for covered employees. Such

ordinances, and other laws of the City and State, further provide for the establishment of a Retirement Board to oversee and administer pension benefits for covered employees.

34. The terms and conditions of the plan of benefits prescribed by, and adopted under, these auspices is hereinafter referred to as the "Retirement System," "Federated System," or "System."

35. Generally, full-time miscellaneous employees become members of the System upon acceptance of employment with the City.

36. Prior to Measure B, the System was funded by contributions from both members and the City under the proportions set forth in the Charter. However, member or employee contributions were never assessed or required with respect to the System's unfunded liabilities; rather members only were responsible for contributing towards the "normal cost"¹ of their annually-earned benefits.

37. Therefore, prior to Measure B, the City Charter provided that the funding of benefits under the system was to be computed annually with respect to the normal cost of each employee-member's annual benefit accrual: the Charter and City Ordinances provide that "any [non-excluded] retirement fund, system or plan for or because of current service or current service benefits ..., in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for [miscellaneous] employees to eight (8) for the City." (Charter § 1505(c); § SJMC 3.28.710.)

38. Under the System, member contributions are made only on account of current service rendered (SJMC § 3.28.710), excepting limited circumstances – not relevant here – where employees may make additional contributions to purchase "prior service credit"². (SJMC §§ 3.28.730, 3.28.740.) Again, members are not and have never been required to make contributions into the System to cover their own or others' unfunded liabilities.

39. Instead, under the Charter, the City has been responsible for ensuring payment of shortfalls between the plan's assets and the actuarially-determined liability for all benefits owed by

¹ The normal cost is the actuarially determined cost of new benefits earned each year by active participants.

² Meaning the purchase of pension credit for years of City service that did not qualify for pension membership

1 the System. Such difference, actuarially determined, represents the System's "unfunded liability,"
2 which fluctuates depending on the System's investment and demographic experience.

3 40. While the City is required to make current service and limited prior service
4 contributions into the retirement system on behalf of members (SJMC §§ 3.28.850, 3.28.890), it is
5 and has been obligated to cover the unfunded liabilities of the retirement system (SJMC § 3.28.880.)

6 41. The form of benefit promised by the City and provided under the System to
7 Petitioner's members was a defined benefit consisting of 2.5% of compensation multiplied by the
8 particular employee's years of employment with the City for which the employee is eligible for credit
9 under the System (i.e. "covered" or "credited" service). The defined benefit also included a
10 guaranteed cost of living adjustment, or "COLA," consisting of a 3% annual increase in the pension
11 benefit.

12 42. Although the right to earn and receive such a defined benefit accrues upon accepting
13 and continuing employment under the System, members become eligible to receive such defined
14 benefit on the earlier of reaching age 55 and completing five years of covered service, or completing
15 a full 30 years of service regardless of age. (SJMC 3.28.1110(A).)

16 43. Under the System, members who become disabled and unable to perform their duties
17 are entitled to a disability retirement benefit.

18 44. The City and the System also provide for payment and funding of health benefits for
19 Federated System retirees.

20 45. To qualify for retiree health benefits, a member must retire under the System and have
21 at least fifteen years of service or receive an allowance that is at least 37.5% of final compensation.
22 Furthermore, a retiree may be eligible for benefits if he/she "[w]ould be receiving an allowance equal
23 to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not
24 apply." (SJMC 3.28.1950(A)(3).) If a retiree qualifies for the plan, the retirement system pays one
25 hundred percent of the lowest cost plan that is available to active City employees. If a retiree does
26 not choose the lowest cost plan, he/she must pay the difference between that premium and the
27 premium for the lowest cost plan.
28

46. To qualify for retiree dental benefits, a member must retire for disability or service and either have credit for five years of service or more or receive an allowance that is at least 37.5% of final compensation. Furthermore, a retiree is eligible for benefits if he/she "would be receiving an allowance equal to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not apply...." If a retiree qualifies for the plan, the retirement fund pays one hundred percent of that members' premiums to an eligible dental plan.

47. The City and the System also provide for a Supplemental Benefit Retiree Benefit Reserve (“SRBR”) for the benefit of retired members, survivors of members, and survivors of retired members retired members. If the balance remaining in the Plan’s income account [after payment of administrative costs and expenses of the retirement System for the applicable fiscal year] is greater than zero, the [B]oard ... transfer[s] ten percent of the excess earnings to the [SRBR], and [] transfer[s] the remaining ninety percent of the excess earnings to the general reserve.” (SJMC 3.28.340(D).) Furthermore, interest on these funds and excess funds are deposited in the SRBR.

B. MEASURE B

48. Measure B seeks to reduce the retirement security of Petitioner's members while simultaneously shifting obligations and debts already incurred by the City unto a small class of individuals, including Petitioner's members.

49. Measure B further seeks to punish members who either challenge its legality or resist the reduction of the retirement benefit to which they are vested and entitled. Specifically, Section 1514-A of Measure B provides that if any of Measure B's terms are "determined to be illegal, invalid or unenforceable as to Current Employees[,]" current employees' salaries shall be reduced by "an equivalent amount of savings."

Suspension and Reduction of COLA Provision

50. With respect to the COLA component of the System's defined retirement benefit, Measure B authorizes the City Council to eliminate or "suspend" payment of the COLA. By its terms Measure B provides the City Council with discretion to suspend the COLA for a period of five years and thereafter may reduce by half the COLA benefit, or continue the suspension.

1 51. Prior to Measure B, miscellaneous employees enjoyed a vested right to an annual three
2 percent increase to their pension benefit after retirement. This served the purpose of ensuring that a
3 retiree's pension kept pace with inflation. (SJMC § 3.400.160.) (It should be noted that System
4 members do not participate in the federal Old Age, Survivor and Disability Insurance (OASDI)
5 program administered by the Social Security Administration, which of course includes a COLA
6 component).

7 52. The COLA component of the System's retirement benefit has been funded by
8 employee and City contributions. Specifically, the normal cost of the COLA component is funded by
9 contributions from members and the City on the same three to eight ratio basis as has been applied to
10 the primary pension benefit. (SJMC § 3.44.00.)

11 53. Measure B, however, provides that the City Council is authorized to suspend COLA
12 payments "in whole or in part" until (and if) "[the City Council] determines that the fiscal emergency
13 has eased." (Section 1510-A). Upon information and belief, such provision applies equally to current
14 employees who retire prior to the adoption of any such resolution suspending the COLA.

15 54. Measure B further provides, that "in the event" the City Council "restores all or part of
16 the COLA" it shall not exceed 3% for "current employees" or "1.5% for Current Employees who
17 opted into the VEP" (*Id.*), and it may only be restored prospectively.

18 55. Measure B therefore reduces vested retirement benefits in the form of permitting
19 elimination and reduction of COLA for both current and future retirees.

20 *Elimination of the Supplemental Benefit Retiree Benefit Reserve ("SRBR")*

21 56. Measure B eliminates of the System's Supplemental Benefit Retiree Benefit Reserve
22 ("SRBR").

23 57. Prior to Measure B, in the event the System had a balance in its operating account
24 after payment of administrative costs and expenses of the retirement System for the applicable fiscal
25 year, the Board of Retirement was required to "transfer ten percent of the excess earnings to the
26 [SRBR], and [to] transfer the remaining ninety percent of the excess earnings to the general reserve."
27 (SJMC 3.28.340(D).) Furthermore, interest on funds and excess funds were deposited in the SRBR.
28

1 58. Funds were held in the SRBR for the benefit of retired members, survivors of
2 members, and survivors of retired members.

3 59. Measure B eliminates the SRBR and transfers the assets held in such account to the
4 System's general fund.

5 Changes to the Obligation to Fund City Employee Retirement Programs

6 60. Measure B transfers to employees the responsibility for funding, in part, the System's
7 previously-incurred unfunded liability. Such an obligation has not, heretofore, existed on the part of
8 System members or employees. As set forth above, the Municipal Code and Charter have
9 exclusively placed responsibility on the City for any such incurred liabilities.

10 61. Specifically, in order to retain their vested entitlement to receive their pension
11 benefits, members must personally agree to assume a *pro rata* portion of up to 50% of the City's
12 obligation for the System's unfunded liabilities, in addition to their obligation to make payment of the
13 normal cost of their annual accrued benefits.

14 62. The obligation to assume half of the City's responsibility for financing the System's
15 unfunded liabilities has been computed by the City to equal approximately 16% of gross pay and,
16 accordingly, Measure B caps this obligation at 16% of an employee's gross pay.

17 63. Employees who decline the obligation to assume the City's debt in this manner, under
18 Measure B, are placed into a "Voluntary Election Plan" or "VEP." Such employees, and only those
19 employees who wish not to, or are economically unable to, relinquish their earned and promised
20 pension benefits must, on a going forward basis, pay to the city an excise or assessment against their
21 wages. Measure B designates such funds towards payment of the City's general obligations
22 associated with its accrued past pension liabilities. Those employees who cannot afford to pay the
23 City's excise of 16% of their wages are forced to accept a reduction in their vested right to receive
24 their pension benefits and promised level of retirement security.

25 64. Specifically, with respect to employees who decline to assume a portion of the City's
26 obligation for the System's unfunded liabilities, or are unable to afford the excise imposed against
27 them: The VEP imposes a lower accrual rate for benefits; imposes a later retirement age; increases
28 the years-of-service retirement eligibility gradually each year, indefinitely and with no limit; reduces

1 and caps the annual COLA; redefines the term “final compensation” to exclude the member’s
2 compensation that would otherwise have been included in computing the member’s pension; and
3 redefines to the member’s disadvantage the criteria applied to disability retirements.

4 65. The amount of the wage excise is unrelated to the particular employee’s cost of benefits
5 and is not particularized to the employee.

6 66. Measure B’s VEP does not present members with a “voluntary” option, as the exercise
7 of such choice is neither volitional nor free from coercion or duress.

8 67. Further, although accepting imposition of the VEP may be more advantageous than
9 remaining in the System as amended by Measure B, both “options” require members to accept a
10 reduction in their vested right to receive promised retirement benefits upon retirement. Those that
11 cannot afford to pay upwards of 16% of their wages to the City’s unfunded liability are required to
12 forego their earned and promised pension rights.

13 68. Prior to Measure B, the City’s miscellaneous employees had the right to retire on the
14 earlier of reaching age fifty-five or working for the City for thirty years. (*See, e.g.*, SJMC §
15 3.28.1110(A).)

16 69. Specifically, a member’s annual service retirement “allowance” – or benefit – was
17 computed with respect to his/her final compensation, which was defined as the “highest average
18 annual compensation earnable by the member during any period of twelve consecutive months of
19 federated city service....” (SJMC § 3.28.030.11.) Such a full service retirement benefit was
20 computed as 2.5% of such final compensation per year of service. Furthermore, one year of service
21 was defined as “1,739 or more hours of federated city service rendered by the member in any
22 calendar year.” (SJMC § 3.28.6809(B).)

23 70. Employees who are unable to shoulder the City’s obligation for the System’s
24 unfunded liabilities must accept, under the VEP, a reduced benefit accrual rate of two percent of final
25 compensation; an increased retirement age of sixty-two; an ever-increasing years-of-service
26 retirement (which increases by six months each year, starting in July of 2017); a reduced COLA of
27 1.5%; “final compensation” redefined as “the average annual pensionable pay of the highest *three*
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1 consecutive years of service”; and an increase in the definition of a year of service to 2,080 hours.
2 (Section 1507-A (emphasis added).)

3 Changes to the System's Disability Retirement Benefit

4 71. Measure B redefines the term “disability” with respect to current employees in a
5 manner that reduces such employees’ eligibility for a disability retirement under the System. It
6 further reduces the right to a disability retirement benefit for employees required to enroll into the
7 VEP.

8 72. Specifically, Measure B reduces the maximum benefit that a disabled retiree may
9 receive, reduces the categories of compensation for purposes of computing the benefit; and reduces
10 the annual COLA.

11 73. Prior to Measure B, a miscellaneous employee qualified for a “disability retirement” if
12 his/her “disability ... render[ed] the member physically or mentally incapable of continuing to
13 satisfactorily assume the responsibilities and perform the duties and functions of the position then
14 held by him and of any other position in the same classification of positions to which the city may
15 offer to transfer him, as determined by the retirement board on the basis of competent medical
16 opinion.” (SJMC § 3.28.1210.) Prior to Measure B, disabled employees who could fill such positions
17 were nevertheless entitled to a disability retirement if no such position existed or was open.

18 74. Further, members who retire because of a service-connected disability were, prior to
19 Measure B, permitted an “annual allowance” of no less than forty percent of their compensation plus
20 2.5% for each year of service beyond sixteen, to a maximum of seventy-five percent of the member’s
21 final compensation. (SJMC § 3.28.1280.)

22 75. With respect to non-service connected disabilities, miscellaneous employees who
23 became members of the System prior to September 1, 1998, were eligible for a non-service connected
24 disability retirement allowance equal to the normal retirement allowance less half a percent for each
25 year the member is younger than age fifty-five. All other members receive an allowance of twenty
26 percent of final compensation plus two percent of final compensation for each year of service in
27 excess of six years, but less than sixteen years, plus 2.5% of final compensation for each year of
28

1 service credit in excess of sixteen years, up to seventy-five percent of the member's final
2 compensation. (SJMC § 3.28.1300.)

3 76. Prior to Measure B, disability retirees received an annual three percent COLA. (SJMC
4 §§ 3.44.010, 3.44.160.)

5 77. Measure B substantially impairs both the eligibility to receive and the substantive
6 benefits provided under the System's disability retirement provisions.

7 78. Specifically, Measure B redefines the term "Disability" for purposes of restricting
8 eligibility to receive a disability retirement. Measure B narrows the definition to apply only to
9 employees whose disability "has lasted or is expected to last for at least one year or to result in death"
10 and "cannot perform any other jobs described in the City's classification plan because of his or her
11 medical condition(s)... regardless of whether there are other positions available at the time a
12 determination is made." (Section 1509-A (emphasis added).)

13 79. Thus, under Measure B, a member who suffers debilitating injury may be denied a
14 disability benefit if she can theoretically perform the functions of any classification, even if there is
15 no vacancy available to accommodate such employee.

16 80. Measure B also reduces the disability benefit provided under the System.
17 Specifically, service-connected disability retirees receive fifty percent "of the average annual
18 pensionable pay of the highest three consecutive years of service." Further, employees become
19 eligible for non-service connected disability retirement benefits after five years of service with the
20 City, computed at two percent times final compensation, defined as the average highest three
21 consecutive years. Such an employee may receive a minimum and maximum non-service connected
22 disability retirement of twenty percent and fifty percent, respectively. (Section 1507-A(e).)

23 81. Under Measure B the disability retirement COLA is reduced to 1.5%.

24 82. Furthermore, Measure B shifts the responsibility for determining eligibility for
25 disability retirement benefits from the Board to "an independent panel of medical experts" subject to
26 a "right of appeal to an administrative judge."

27 ///

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1 Funding of the City's Retiree Health Obligations

2 83. Pursuant to the SJMC, members of the Federated System who satisfy certain
3 conditions related to service or disability retirement are entitled to receive retiree medical and dental
4 benefits. (SJMC §§ 3.28.1950, 3.28.2000.)

5 84. Members of the System enjoy a right to retiree healthcare benefits that is vested by
6 explicit or implied contract. Indeed, employees contribute to the cost of retiree health through their
7 own payroll deductions.

8 85. Retiree healthcare benefits are a form of deferred compensation for present service.

9 86. Retiree healthcare benefits are also provided as a result of written agreements between
10 the City and labor organizations, including Petitioner.

11 87. Prior to Measure B, AFSCME members have contributed to their retiree health
12 insurance on a one-to-one basis with the City.

13 88. Prior to Measure B the City has not, and did not, make contributions at a level
14 sufficient to fully prefund its retiree health obligations. Rather, the City paid for its retiree health
15 obligations through a "pay-as-you-go" method, utilizing both its own and employee contributions
16 towards providing health benefits to its retirees. Where such amounts were insufficient to pay the
17 city's health obligations, the City was responsible for such unfunded amounts.

18 89. Although active employees contributed in the form of payroll deductions towards the
19 costs of retiree healthcare, they were not responsible for funding the full cost of the Retiree
20 Healthcare Plan's ("RHC Plan") unfunded liabilities.

21 90. On information and belief, the City has developed an Annual Retirement Cost or
22 "ARC" that incorporates the City's predicted normal cost of retiree health obligations and the cost of
23 promised but unfunded benefits to current and future retirees (*i.e.* unfunded liabilities).

24 91. Beginning in or around 2009, the City imposed increasingly significant layoffs of its
25 employees and further reduced wages of those that remained by as much as twelve percent of
26 pensionable pay. As a result, the City's pay-as-you go method of funding its retiree health
27 obligations became untenable as the amount of employee contributions to the ARC necessarily
28 declined due to such layoffs and pay reductions. The City's actions further increased the pool of

1 retirees and consequently its retiree health obligations, as employees opted to retire rather than be
2 placed on lay-off or continue to work under significant pay reductions.

3 92. Measure B attempts to shift the City's obligation associated with previously-incurred
4 and promised retiree health benefits onto its current employees. Measure B seeks to make current
5 employees responsible not only for 50% of the normal cost of their annually-incurred retiree health
6 obligations, but also for the City's unfunded liabilities with respect to all of its retiree healthcare
7 obligations. (Measure B, § 1512-A(a) (making active employees responsible for contributing "a
8 *minimum* of [fifty percent] of the cost of retiree healthcare, including both normal cost and unfunded
9 liabilities").)

10 93. Upon information and belief, with respect to members of the Petitioner, such an
11 obligation imposes an excise on current employee compensation for the payment of the City's
12 general obligations.

13 94. Such excise is substantially greater than the amount of benefits each such employee is
14 expected to receive under the RHC Plan. As a result, such employees are paying for benefits
15 unassociated with their City service.

16 95. In addition, the excise is imposed for the stated purpose of paying the City's general
17 obligations, that is, the unfunded liabilities of the City retirement system

18 96. Measure B further attempts to set a framework to severely diminish the value of the
19 "low cost plan" to which members are entitled upon retirement.

20 97. Measure B also purports to "unvest" the right to retiree health notwithstanding the fact
21 that employee members of petitioner have directly contributed through payroll deduction to the cost
22 of such benefits. (Measure B, Section 1512-A(b) (stating "[n]o retiree healthcare plan or benefit shall
23 grant any vested right..."; providing City with right to "amend, change or terminate any [RHC P]lan
24 provision").) Such provision, as alleged below, is an unconstitutional taking and impairment of
25 contract, and violates due process, as guaranteed by the California Constitution.

26 98. Measure B also redefines the benefit provided under the RHP as "the medical plan
27 which has the lowest monthly premium available to any active employee in either the Police and Fire
28 Department Retirement Plan or [the System]." (Section 1512-A(c).) This effectively fixes employee

benefits to the lowest cost plan City-wide, whether or not that plan was bargained for or imposed upon a union other than AFSCME by the City.

99. As a result, Measure B reduces the expectations of Petitioner's members by reducing the amount of Retiree health premium payment available to them upon retirement.

Retroactive Shifting of Public Debt to a Small Class of Individuals

100. Measure B shifts a substantial burden onto current employees for the financing of the System's, Plan's, and the RHC Plan's unfunded liabilities.

101. Such unfunded liabilities represent the previously-incurred obligations of the City with respect to benefits earned by current and future retirees of the City.

102. With respect to the System, under Measure B, employees who refuse to forego their vested right to their pension benefit must make "additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities...." (Section 1506-A(b).)

103. The intent, purpose and effect of Measure B is to impose a fine on those employees who refuse to relinquish their constitutionally-protected right to receive their earned and promised pensions. By imposing such fine on only those who do not accept the City's demands to amend its pension obligations, the City is imposing a punishment or penalty on a select group of individuals.

104. Prior to Measure B, the City was and has been obligated to pay for any such unfunded liabilities. Further, until the VEP is implemented, Section 1506-A of Measure B governs all members of the System, obligating them to shoulder the City's debts related to the System's unfunded liabilities.

105. Similarly, if a court finds Section 1506-A(b) of Measure B to be "illegal, invalid or unenforceable" then the City is purportedly empowered to require employees to pay down the City's obligations for the System's unfunded liabilities. (Section 1514-A of Measure B.)

106. Measure B places on current employees the responsibility of funding the cost of their benefits in addition to the unfunded liabilities not associated with their own service, including the already-accrued retiree health benefits obligations and the benefits payable to current retirees.

1 116. California's Constitution, Article I, section 9, prohibits the state and its
2 instrumentalities, including the City, from passing a law that impairs the obligation of contracts
3 ("Contracts Clause").

4 117. Modifications to public employee retirement plans affecting current employees must
5 be reasonable under California's Contracts Clause. Changes can be reasonable only if (1) they bear
6 some material relation to the theory of a pension system and its successful operation and (2) changes
7 in a pension plan that result in a disadvantage to employee are accompanied by comparable new
8 advantages.

9 118. Miscellaneous employees enjoy vested contractual rights to the System, Plan, their
10 retirement benefits, and any enhancements implemented once they begin working with the City.

11 119. Measure B substantially impairs these rights without providing a comparable
12 advantage.

13 120. Under California law, these principles apply to changes in the method of funding of
14 pension systems, and such changes cannot be imposed on members to their disadvantage, when there
15 is no corresponding advantage.

16 121. Measure B, and the funding mechanisms providing for reduction in wages and shifting
17 of liabilities to a small class of individuals who derive no benefits from such liabilities, is contrary to
18 the theory of a pension system.

19 122. Measure B interferes and impairs those contractual rights in a way that is
20 unreasonable.

21 123. Measure B's provisions bear no material relation to the theory of a retirement system
22 or its successful operation; they simply allow the City to escape from its obligation to provide its
23 employees with these form of deferred compensation with which it previously enticed them into its
24 employ.

25 124. Measure B's provisions harm the effected employees without providing them with any
26 comparable advantage, commensurate benefit, or compensation.

27 125. Therefore, Measure B violates Article I, Sect. 9 of the California Constitution as it
28 applies to existing plan participants and is unconstitutional.

EIGHTH CAUSE OF ACTION
Promissory Estoppel and Equitable Estoppel

207. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

208. Promissory estoppel serves as consideration in order to enforce a bargained-for agreement. That is, the reliance on a promise made by one party serves as a basis to enforce such promise in law or equity.

209. Estoppel applies to claims against the government, particularly where the application of the doctrine would further public policies and prevent injustice.

210. The City, through its Municipal Code, Charter and communications with employees and their labor organizations represented that employees were not liable to finance public debt, or the System's or RHC Plan's unfunded liabilities.

211. The City further represented that employees would earn benefits and have the right to receive a certain level of benefits. In reliance thereon, such members and employees accepted and continued in employment, and made payroll contributions of their own into the System and RHC Plan.

212. The City should have reasonably expected these promises to encourage the miscellaneous employees to accept employment with it and continue working for it until they qualified for service retirement.

213. The City violated these promises when it adopted Measure B by reducing benefits and shifted the burden of financing its unfunded liabilities upon miscellaneous employees.

NINTH CAUSE OF ACTION
REQUEST FOR DECLARTORY RELIEF
(Code of Civ. Pro. § 1060)

214. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

215. Measure B requires that the City Council adopt ordinances to "implement and effectuate [its] provisions...." Unless relief is granted, Measure B becomes effective immediately and sets as a goal that "such ordinances shall become effective no later than September 30, 2012."

216. An actual controversy has arisen and now exists between Plaintiff and Defendants as to Defendants' duties with respect to implementation of Measure B.

217. Plaintiff contends that Measure B violates the “Contracts Clause” and prohibition on “Bills of Attainder” (Cal. Const. art. I § 9), “Taking Clause” (Cal. Const. art. I § 19), “Due Process Clause” (Cal. Const. art. I § 7), “Pension Protection Act” (Cal. Const. Art. XVI § 17), prohibition on unlawful excises (Cal. Const. art. I § 7), and right to petition the courts (Cal. Const. art. I §§ 1, 2) pursuant to the state Constitution.

218. Plaintiff is informed and believes that the City disputes the allegations contained within this Complaint and Petition and contends that it has a legal duty to implement Measure B as a result of its adoption by the voters of Defendant City.

219. Plaintiff desires a judicial determination of their rights and a declaration of whether Measure B violates the aforementioned sections of the California Constitution, the City Charter, SJMC, and/or provisions of the Plan.

220. A judicial determination is necessary and proper at this time under these circumstances in order to determine the duties and obligations of the parties with respect to Measure B.

TENTH CAUSE OF ACTION
REQUEST FOR INJUNCTIVE RELIEF
(Code of Civ. Pro. §§ 525, 526, and 526(a))

221. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

222. Plaintiff and groups, residents, registered voters, and taxpayers of the City will suffer irreparable harm as a result of the City's expenditure of staff time and taxpayer funds in connection with implementation of Measure B.

223. Furthermore, members represented by AFSCME will suffer irreparable harm from the constitutional violations at issue.

224. Plaintiff can demonstrate a high-likelihood of success on the merits of its claim that Measure B violates the aforementioned provisions of the California Constitution, the City Charter, Municipal Code, and agreements between the parties.

1 225. Plaintiff has no plain, speedy, or adequate remedy at law.

2 226. Plaintiff's members will suffer irreparable harm in the event the City is not enjoined
3 from implementing Measure B.

4 227. The injunctive relief Plaintiff seeks is prohibitory in nature, and it seeks to restrain
5 and/or prohibit Defendant City from taking any steps to implement, enforce, or otherwise give effect
6 to Measure B.

7 **ELEVENTH CAUSE OF ACTION**
8 **PETITION FOR WRIT OF MANDATE**
 (Code of Civ. Pro. § 1085)

9 228. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth
10 fully herein.

11 229. Respondent City, and those public officers and employees acting by and through its
12 authority — including Necessary Party in Interest — have a clear, present, and ministerial duty to
13 implement only those ordinances and regulations that are not in conflict with the California
14 Constitution. Respondent City has failed to perform its duty to comply with those requirements to
15 the extent it intends to implement the provisions of Measure B.

16 230. Measure B violates Const. art. I, sects. 1, 2, 7, 9, 19; Const. art. XVI, sect. 17 of the
17 California Constitution; the City Charter; the SJMC; and the terms of the Plan.

18 231. Petitioner is beneficially interested in a peremptory writ of mandate to compel
19 Respondent City, and those public officers and employees acting by and through its authority, to
20 perform their duties imposed by law, including refraining from implementing the provisions of
21 Measure B.

22 232. Plaintiff has no plain, speedy or adequate remedy at law.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff-Petitioner prays for the following relief:

25 1. A declaration that Measure B cannot be applied to the AFSCME members working for the
26 City on or before June 5, 2012;

1 2. A declaration ordering defendants and respondents to not apply the terms of Measure B
2 against petitioner-plaintiff's members currently in the City's employ, and restoring to such employees
3 all rights and benefits purportedly abridged by Measure B.

4 3. A permanent injunction prohibiting the defendants and petitioners from applying or
5 otherwise enforcing any part of Measure B against members working for the City before June 5,
6 2012;

7 4. A peremptory writ mandating defendants and respondents and the Board to apply all Plan
8 provisions, rights and benefits in effect before June 5, 2012, to AFSCME members and prohibiting
9 the application or implementation of Measure B to them;

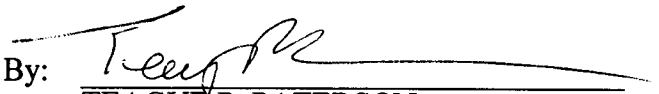
10 5. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5,
11 Government Code Section 800, or otherwise;

12 6. For costs of suit herein incurred; and,

13 7. For such costs and further relief as the Court deems just and proper.

14
15 Dated: February 8, 2013

BEESON, TAYER & BODINE, APC

16
17 By: 
18 TEAGUE P. PATERSON
19 VISHTASP M. SOROUSIAN
Attorneys for Plaintiff and Petitioner
AFSCME LOCAL 101

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDAMUS**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☐ **By Personally Delivering** a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ **By Messenger Service** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure § 1011, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service.


☐ **By UPS Overnight Delivery** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ **By Facsimile Transmission** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☐ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, February 11, 2013.



Tanya Gatt

EXHIBIT 5

For Immediate Release:

December 23, 2013

Contact:

Michelle McGurk, (408) 535-4840 or (408) 655-7332

David Low, (408) 535-4857 or (408) 499-8328

**Statement from Mayor Chuck Reed regarding Judge Lucas’
Tentative Decision in the Measure B Lawsuit**

San Jose, Calif. – This morning, the Honorable Patricia M. Lucas issued a tentative decision in the lawsuit over Measure B, the San Jose pension reforms approved with nearly 70% of the vote in 2012. The decision is available at: <http://www.sanjoseca.gov/DocumentCenter/View/25332>. Judge Lucas has upheld 10 out of 15 sections of Measure B, including:

- Elimination of the Supplemental Retiree Benefit Reserve (“the 13th bonus check”).
- Provisions related to the City’s retiree healthcare benefits.
- Employee compensation reductions to help cover the retirement plans’ unfunded liabilities (*note: the Court ruled such changes could be made via wage reductions, but not via increased employee pension contributions*).
- Reforms to the definition and administration of disability retirement benefits.
- Reservation of Voter Authority over any pension plan changes.

Judge Lucas also upheld the severability provisions of the measure, meaning the valid provisions may go into effect. The City has entered into a stipulated agreement with its unions to delay the employee compensation reductions until at least July 1, 2014.

Following is a Statement from Mayor Chuck Reed:

“I am pleased that Judge Lucas has upheld a majority of the Measure B provisions and has protected a vast majority of the targeted fiscal savings that will help rebuild essential public services and protect the long-term sustainability of our employee retirement systems.

“In particular, this ruling protects \$20 million in annual savings the City is already reaping due to the elimination of bonus pension checks and changes to our retiree healthcare plans. Those savings have allowed us to slowly begin restoring services to the public and slowly begin restoring pay to our employees.”

“Unfortunately, the Judge’s decision to invalidate certain portions of Measure B also highlights the fact that current California law provides cities, counties and other government agencies with very little flexibility in controlling their retirement costs. That’s why I believe that we need a constitutional amendment that will empower government leaders to tackle their massive pension problems and negotiate fair and reasonable changes to employees’ future pension benefits.”

Statement from Mayor Chuck Reed regarding Judge Lucas' Tentative Decision in the Measure B Lawsuit
December 23, 2013
Page 2

The City will be carefully reviewing the tentative ruling in the coming days. The decision will become final if neither party submits an objection within 15 days.

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